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No. (1)

Supreme Court, U.S.
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In The

Supreme Court of the United States

TAWOOS BAZARGANI,

Petitioner,

v.

KENNETH and JACQUELINE SNYDER,
and PAUL BAGHERPOUR,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the opinion below departed from the accepted and usual course of Judicial proceedings and therefore necessitated the United States Supreme Court's supervision because its ruling conflicts with this court's prior rulings upon the Rule 16, pre-trial Order and pre-trial conference and the agreement between the parties and because it has deprived the petitioner from her due process rights to a fair, impartial proceeding of her defense of the instant claim to its merits.

2. Whether opinion below departed from the accepted and usual course of Judicial proceedings and therefore necessitated the United States Supreme Court's supervision because its ruling conflicts with this court's prior rulings upon the withdrawal of the attorney during the course of litigation without being substituted by another attorney and because it has deprived the petitioner from her due process rights to a fair, impartial proceeding of her defense of the instant claim to its merits.

3. Whether opinion below departed from the accepted and usual course of Judicial proceedings and therefore necessitated the United States Supreme Court's supervision because its ruling conflicts with this court's prior rulings upon a crime committed by the plaintiffs and the witness because of their inconsistent statements while under oath and because

QUESTIONS PRESENTED – Continued

it has deprived the petitioner from her due process rights to a fair, impartial trial where she could have proceeded her defense against the instant religious discrimination claim to its merit.

4. Whether opinion below departed from the accepted and usual course of Judicial proceedings and therefore necessitated the United States Supreme Court's supervision because its ruling conflicts with this court's prior rulings upon timely filing of a Brief pursuant to Pennsylvania Rule of Civil Procedure and because it has deprived the petitioner from her due process rights to a fair, impartial proceeding of her defense of the instant claim to its merits.

5. Whether opinion below departed from the accepted and usual course of Judicial proceedings and therefore necessitated the United States Supreme Court's supervision because its ruling conflicts with this court's prior rulings upon plaintiffs' failure to establish any liability against the defendant and because its has deprived the petitioner from her due process rights to a fair, impartial proceeding of the instant claim.

6. Whether opinion below departed from the accepted and usual course of Judicial proceedings and therefore necessitated the United States Supreme Court's supervision because its ruling conflicts with this court's prior rulings upon not denying the plaintiffs' motion for the attorney fees and because it

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has deprived the petitioner from her due process rights to a fair, impartial proceeding of her defense of the instant claim to its merits.

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PETITION FOR A WRIT OF CERTIORARI

OPINION BELOW

The court of appeals entered its judgment on June 15, 2007 for the case Nos. 06-2396 and 05-4051 and the Order of District Judge and the opinion of the case are attached and the deadline date for filing the petition for the writ of certiorari is September 13, 2007.

STATEMENT OF JURISDICTION

The court of appeals entered its judgment on June 15, 2007. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rules of Civil Procedure ("F. R. Civ. P.") Rules 510.24[1][a] & 510.24[1][b] plus Rule 510.24[1][b][i] govern the United States Supreme Court's supervisory power assuring that circuit courts remain within accepted boundaries (these rules are reprinted in the Appendix C as they are documented).

F. R. Civ. P. Rule 16 govern the Rules for pre-trial conference including pre-trial order and the agreement between the parties, where it defines as follows: The pre-trial order is intended to further the purposes of the conference. As stated by Judge Charles E.

Clark: "A pre-trial order is an absolute necessity (Judge Clark, Clark, Objectives of Pre-Trial Procedure, 1956, 17 Ohio St.L.J. 163, 169.), It further rules that a party charged with failing to comply carries the burden of showing that in fact he met his obligation under the order. Should the party be unable to do so, various sanctions may be imposed.

ABA Model Rules of Professional Conduct Rule 1.16(d) govern the rules for attorney withdrawal where it documents that a lawyer must withdraw if "the representation will result in violation of the rules of professional conduct or other law" and adds that Withdrawal, particularly in the course of litigation, is no panacea. Courts are often understandably resistant to allowing lawyers to withdraw in the midst of litigation. Further it clarifies that, Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests such as giving reasonable notice to the client, allowing time for employment of other counsel. 42 Pa. C.S.A. Section 2502 also govern the rules for an attorney withdrawal and documents as follows: A court . . . will grant him leave to withdraw if the defendant has failed to pay the attorney any fee or to answer correspondence.

18 United States Code Annotated ("18 U.S.C.A.") Section 1621 rules as follows: Whoever –

(1) having taken an oath before a competent tribunal, officer or person, in any case in which a law of the United States authorizes an oath to be

administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under Section 1746 of title 28 United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years or both. This section is applicable whether the statement or subscription is made within or without the United States.

18 U.S.C.A. Section 1621, note 5 documents that Purpose of this section is to keep the courts free from pollution of perjury, it further rules as follows: "Purpose of this section is to keep process of justice free from contamination of false testimony; it is for the wrong done to the courts and the administration of justice that punishment is given, 18 U.S.C.A. Section 1621, note 21 also documents that "Completion of offense." Deliberate material falsification under oath constitutes crime of "perjury" and crime is complete when a witness statement has once been made.

Both F. R. Civ. P. and Pa. R. Civ. P. mandate that the motion for Reconsideration of an Order should be

filed within ten (10) days from the date of order unless otherwise ordered by the court.

Pursuant to F. R. Civ. P. when an "agent acts in his or her own interest and commits a tortious act on his own behalf in a matter which is beyond the scope of his employment, the principle cannot be held liable for the agent's tortious act as long as the principle does not drive any benefit from that tortious act."

The following F. R. Civ. P. govern the entitlement of the attorney fees in litigations: Rule 54.171[2][c][i] rules as follows: "Liability for Fees May Be Imposed on Counsel or Litigant Who Acts in Bad Faith." When a party acts "in bad faith, vexatiously, wantonly, or for oppressive reasons, "the court may employ its inherent equitable power to award attorney fees as sanction. Such a fee award is permissible under the bad faith exception to the American Rule, and its purpose is to compensate the wronged party, punish the wrongdoer, and protect the integrity of the court.

Further the Rule 54.171[2][c][ii] rules that "Exception Applies Only to Conduct Relating to Litigation." 42 Pa. C.S.A. Section 2503 rules as follows: "American rule" provides that parties to litigation are responsible for their own counsel fees, unless otherwise provided by statutory authority, agreement of the parties or some other recognized exception. The Same Rule further rules as follows: "Under this section, litigant is entitled to attorney fees if he can establish that action was brought arbitrarily, vexatiously or in bad faith. The above identified Rule

further categorizes "Right of Participants to Receive Counsel Fees" in ten (10) distinct items involving the different categories of litigation and the item number nine (No.9) covers the entitlement of the attorney fees in private litigation as follows: "(9) Any participant who is awarded counsel fees because the conduct of the another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith."

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY:

For **twenty-three (23) years,** since purchase, the owner Tawoos Bazargani, M.D. ("Dr. Bazargani") has always rented out her property subject to this claim, at One Christian Street, Apt. 43, Philadelphia, PA 19147 ("rental property"), and for **twenty-three (23) years** this property has been rented to the tenants without any animal, transcript of jury trial of June 14 & 15, 2005 included in the record (see trial transcript, Pg. 1.122).

For about a decade in 1980s Dr. Bazargani contracted the realtor NOSH to manage the rental property and Mr. Thom Schickling as the manager for the realtor had full authority in choosing any tenant whom seemed reasonable but applied no pet policy. **A copy of the lease of realtor NASH with tenants, Lisa Thurman, Betsy L. Buhl and Leslie Moran is attached (see App. Pgs. 39-41). The**

following paragraph is from the lease paragraph "1.(a) witnesseth, section(s) No pets or animal of any kind whatsoever will be permitted on or within the herein described premises."

In or about November 2000, Dr. Bazargani agreed to compensate Mr. Paul Bagherpour ("Mr. Bagherpour"), the agent, in exchange for his procuring a tenant for the rental property (see trial transcript Pgs. 1.137-138). Dr. Bazargani told Mr. Bagherpour about the absolute prohibition against pet, Dr. Bazargani, however, never instructed Mr. Bagherpour to reject certain types of tenant; these facts are documented in trial transcript (see Pg. 1.127).

Mr. Snyder on December 3, 2000 called Dr. Bazargani at the number written at the add and **Dr. Bazargani following the initial interview approved Mr. Snyder and his family as a proper candidate for leasing and referred them to Mr. Bagherpour. Mr. Snyder has always denied this interview** (see trial transcript Pg. 1.125), and claimed that he received a phone call from Mr. Bagherpour after he left a message at the number written in the ad during that weekend (December 3, 2000), which was not true, indeed, there was not an agreement between Dr. Bazargani and Mr. Bagherpour that to refer any candidate prior to initial interview with Dr. Bazargani. However, during this interview Mr. Snyder did not mention about having a dog and he only exposed this information while completing the application for rental property on

December 4, 2000 after Mr. & Mrs. Snyder ["the Snyders (plaintiffs)"] met Mr. Bagherpour in rental property for inspection following Mr. Snyder's arrangement. Mr. Bagherpour immediately advised the Snyders that the "owner" did not allow pets in the rental property and they should abort the application process; these facts are documented in Mr. Bagherpour's testimonies (see trial transcript Pg. 1.148). Indeed, so clearly had Mr. Bagherpour conveyed the pet prohibition that the Snyders were of the belief that their application could be rejected solely due to their dog, and notwithstanding Mr. Bagherpour's statement Snyders were trying to continue to negotiate for the rental property promising to pay an additional security deposit for potential damage caused by the dog and insisting that Mr. Bagherpour submit the application to the owner, these facts are documented in Bagherpour's direct (see trial transcript Pg. 1.122).

Mr. Snyder while inspecting rental property on December 4, 2000 had gone further and initiated conversation about the religion, then, Mr. Snyder through his meticulous questions about the owner's religion and its relation with dog prohibition has learned about the owner's religion, these are documented in Bagherpour's direct (see trial transcript Pg. 1.150); indeed he was Mr. Snyder who has been reared within the guide lines of American Constitutions who has injected the idea to Mr. Bagherpour that they can converse about their religions. The second conversation

about the religion was later during rental process and the pattern of conversation was basically identical with the first conversation when Mr. Bagherpour has also reciprocated the question about Mr. Snyder's religion, then, Snyders have removed the question from its context and had tried to use it in building up their claim of discrimination, while directing a serious threat against Dr. Bazargani, these facts are documented in Bagherpour's testimonies (see trial transcript Pg. 2.48). Following denying Snyder's application for rent Mr. Snyder while at rage has called Mr. Bagherpour and has launched the following threat against Dr. Bazargani that he was denied apartment because of being a Jewish man and that he belongs to a network which has endless power and that Dr. Bazargani either rents him the apartment or faces the consequences (see Dr. Bazargani's testimonies, trial transcript Pg. 2.48). None of the above conversations about the religion between Mr. Snyder and Mr. Bagherpour were under authority of Dr. Bazargani, indeed on the contrary to their conversation about the relation between the dog and Dr. Bazargani's religion, Dr. Bazargani did not want animal to her apartment because they cause the problems and had nothing to do with Dr. Bazargani's religion. Furthermore, on December 9, 2000, Mr. Snyder while at rage has told to Mr. Bagherpour that his friend who is an attorney, Mr. Larry Ceisler, will call and interrogate him about not renting the apartment to Snyders (see affidavit, App. Pg. 77). Then the same day Mr. Larry Ceisler while claiming an attorney has called for interrogation and Mr.

Bagherpour while terrified and threatened of attorney Larry Ceisler's interrogation has delivered the statements which have been used by Snyders during the entire litigation of the above case, in order, to establish their claim, a true and correct copy of Mr. Larry Ceisler's affidavit is attached (see App. Pg. 77). Indeed Mr. Snyder has brought his own preoccupation about the religions and its boundaries and its related power into this interaction and has reflected it upon Mr. Bagherpour when Mr. Bagherpour has reciprocated the same question about his religion.

On October 17, 2005 Honorable John Fullam issued his Order and Granted defendants' motion for stay of proceedings a copy of the Order is attached (see App. Pgs. 28-29). On October 26, 2005 plaintiffs filed the motion for Reconsideration of the above mentioned Order of October 17, 2005 demanding of vacating the Order. On November 9, 2005 defendant Dr. Bazargani filed her motion in opposition to plaintiffs' motion of October 26 where plaintiffs demanded for vacating the Order granting defendants' motions for stay of proceedings included in Docket Entries. On January 11, 2006 Honorable John P. Fullam vacated his Order of October 17, 2006 which granted defendants' motion for stay of proceeding which was entered in the record on January 12, 2006 **and further he Ordered for, stay of execution of judgment pending appeal, upon defendants' posting a supersedeas bond of ten thousand dollars ($10,000.00) to be responded by the defendants by twenty (20) days from the date of Order (that**

is February 1, 2006) a true and correct copy of this order is attached (see App. Pg. 30), which led to defendant Dr. Bazargani's motion of February 1, 2006 for Reconsideration of the Order of January 11, 2006 denying defendants' motions for stay of proceedings, this motion of Dr. Bazargani was denied on March 10, 2006, and entered the record on March 13, 2006, a copy of the Order is attached (see App. Pg. 32). Consequently, on April 10, 2006 defendant Dr. Bazargani filed her timely Notice of Appeal from Order of March 13, 2006 denying Dr. Bazargani's motion for stay of proceedings, a copy of Notice of Appeal is attached (see App. Pg. 57). On May 2, 2006 an attorney with the name of Ms. Laura L. Greene under title of a staff attorney with no history of the appearance in this claim wrote a letter to defendant Dr. Bazargani where she unilaterally scrutinized the timings for legal filings only for one party (defendant Dr. Bazargani) and said that Dr. Bazargani's motion of February 1, 2006 for Reconsideration which followed Honorable John P. Fullam's Order of January 11, 2006 **where the Honorable John Fullam vacated the Order of October 17, 2006 granting defendants' motions for stay of proceedings and he further Ordered for ten thousand dollars supersedeas bond to be responded by defendants by twenty days (February 1, 2006)** should have been filed by ten days from the Order rather than twenty days. Consequently she raised question about the appeal in reference to posting for ten thousand dollars. Ms. Laura L. Greene's letter was sufficiently answered by Dr.

Bazargani's letter of May 11, 2006, a true and correct copies of these letters are attached (see App. Pgs. 52-54) and Dr. Bazargani's motion of May 30, 2006 "Appellant Tawoos Bazargani, M.D.'s Motion In Support Of Her Timely Appeal For Stay Of Proceedings To The Court Of Appeals For The Third Circuit Of The Above Claim," see Docket Entries, followed her response to Ms. Laura Greene's above-mentioned letter.

B. STATEMENT OF FACTS:

The instant complaint was filed by the plaintiffs in the U. S. District Court for the Eastern District of Pa. in or about December 2002. On or about September 20, 2004 an Arbitration hearing was held where the Arbitrators' decision was in favor the owner defendant Tawoos Bazargani, M.D. ("Dr. Bazargani") a copy of decision is attached (see App. Pg. 13) and the Arbitrators also found $10,000.00 in favor of plaintiffs and against defendant Mr. Paul Bagherpour ("Mr. Bagherpour").

Defendant Mr. Bagherpour immediately after, appealed the Arbitrators' decision. Therefore, plaintiffs claimed the following "The third Circuit's recent decision in *D'Iorio* makes absolutely clear that once one party files a timely demand for a trial de novo, the case is restored to the docket and treated for all purposes as if the arbitration has never occurred"

while referring to F. R. Civ. P. 83(a)(1) and the plain language of 28 U.S.C.A. Section 657(c).

Pursuant to Federal Rule of Civil Procedure ("F. R. Civ. P.") Rule 16 a pre trial conference was held on January 13, 2005 where a pre-trial Order was issued by Honorable Bruce W. Kauffman Ordered that plaintiffs and defendant Dr. Bazargani to sign a General Release from any liability about the instant case. The followings are from plaintiff's Summary Judgment in reference to pre-trial order (see App. Pg. 65) filed prior to trial *de novo*: "**the Snyders and Bazargani reached the settlement under which the Snyders agreed to not appeal the arbitration award with respect to Bazargani in exchange for mutual releases . . .** " (see App. Pgs. 81-83); " **. . . and Judge Kauffman placed the substance of the new settlement agreement on the record:" Dr. Bazargani . . . you have three lawyers who are on separate sides . . . but they have agreed on what those releases are intended to accomplish"** (see App. Pg. 8). On March 8, 2005 the above indicated case was reassigned to Honorable John P. Fullam. On May 26, 2005 Honorable John P. Fullam issued his Order and dismissed Dr. Bazargani from the liability based on Arbitrators' decision and ordered for hearing on June 15, 2005 for defendant Mr. Bagherpour only. On May 31, plaintiffs filed a motion opposing Honorable John P. Fullam's Order of May 26, 2005 a copy of the Order is attached (see App. Pg. 18). As the result of parties agreement for General Release, as detailed above in this Paragraph,

defendant Dr. Bazargani has been totally deprived from her due process rights to benefit the discovery for trial de novo, her former attorney's response in reference to discovery is a clear, convincing evidence of this claim is attached (see App. Pgs. 42-43).

Dr. Bazargani contracted Mr. Joel Todd-Esquire, ("Mr. Todd") from the firm, Dolchin, Slotkin & Todd P. C. to represent Dr. Bazargani in the instant case consequently, he defended Dr. Bazargani from the commencement of the claim until April 19, 2005, when he filed his withdrawal, and the hearing was scheduled on April 25, 2005 and following Dr. Bazargani's motion for Sick Leave it was continued to June 14 & 15, 2005. Although Dr. Bazargani had special trust in his representation but his withdrawal just prior to the hearing, significantly prejudiced Dr. Bazargani and her defense for the following causes:

A- On the contrary to Mr. Todd's documentation in his withdrawal motion, that, "Bazargani will not suffer prejudice if Todd and DS & T are permitted to withdraw" (see App. Pgs. 58-62), Dr. Bazargani suffered significant prejudice because despite her excessive effort she could not retain another attorney because, conceivably, no attorney wanted to pick up a case where the fundamental portion of the defense had already been proceeded by another attorney, therefore, she proceeded to the trial empty handed (with no discovery material) as a pro se which noticeably fed the plaintiffs' interest.

B- Mr. Todd's argument about the appeal matter has been pointless because Mr. Todd was fully aware that co-defendant Mr. Bagherpour had already appealed the Arbitrators' decision and as an attorney he also was fully aware that the appeal of one party will be treated the appeal from all parties, pursuant to Pa. R. Civ. P., see Third Circuit's recent decision in *D'Iorio,* furthermore, any of client's question could have been solved with one interview, which Dr. Bazargani asked for, rather than withdraw (see Docket Entries).

C- Dr. Bazargani has a history of open heart surgery and on February 20, 2005 she was hospitalized because additional to open heart surgery she had-developed Atrial Fibrillation which is a serious disorder involving the heart beat, and a diagnosis that is established through the EKG testing and not by doctor's examination, a true and correct copy of doctor's report is attached here (see App. Pgs. 44-48). Dr. Bazargani had a personal conversation with Mr. Todd, where she explained about her diagnosis, Atrial Fibrillation and her legitimate concern about her health, and enclosed a copy of her medical certificate (see App. Pg. 60).

D- Finally, Dr. Bazargani was deadly misunderstood for her concern about her own safety and not being retaliated, including the judges who ruled her brief a copy of the opinion is attached (see App. Pgs. 2-11). Because, Dr. Bazargani has received a direct threat from the plaintiffs that he is a Jewish man who belongs to a world wide organization which has

endless power and that Dr. Bazargani either rents him her apartment or faces the consequences (see trial transcript Pg. 2.48). Dr. Bazargani has been subject to many victimization and discriminatory behavior against her, therefore, she has every and all reasons, to concerned about not being retaliated against and wanted to negotiate. Furthermore, the Mutual Release has had a substantial impact upon the proceeding to the discovery the instant claim to its merit and plaintiffs had neither the right to control the Mutual Release nor to refuse to sign it.

Following appeal for trial de novo plaintiffs filed a partial summary judgment, which was accordingly responded by defendant Dr. Bazargani's former attorney, where Dr. Bazargani was found not liable and was dismissed (see Docket Entries).

There has been a prolonged dispute about the context of General Release. On April 15, 2005, Dr. Bazargani wrote her letter to the plaintiffs where she attached General Release for plaintiffs' signature (see App. Pg. 66). On April 25, 2005 the plaintiffs mailed their brief note in reference to signing General Release as it had been prepared by the attorneys with no discussion, whatsoever, with Dr. Bazargani. Dr. Bazargani immediately responded plaintiffs' letter through her letter of April 28, 2005, a correct copy of this letter is attached (see App. Pgs. 84-87). Plaintiffs, who were celebrating Mr. Todd's withdrawal, recklessly ignored Dr. Bazargani's response, and rushed in proceeding to trial de novo. On June 10, 2005 **Dr. Bazargani signed very same General Release**

which was prepared by plaintiffs' own attorney and faxed the signed and notarized General Release to plaintiffs' attorney. Although plaintiffs were fully aware that, the Order of Rule 16 conference for Mutual Release is an absolute necessity while fully repudiating the judges' Order and parties agreement, plaintiffs blatantly refused to sign the General Release without presenting any legal cause for such a refusal and unilaterally proceeded to trial de novo.

Consequently, Dr. Bazargani, an absolute victim, proceeded for trial de novo as a pro se and empty handed with no discovery what so ever. On June 14, 2005, Honorable John Fullam held a conference including all parties and their attorneys where he acknowledged that Dr. Bazargani has signed the General Release but plaintiffs flatly refused to sign the General Release and the only cause for such refusal was that, at this time plaintiffs refuse to sign the General Release, the related portion of the trial transcript is attached (see App. Pgs. 67-76). A jury trial was held which resulted in a verdict and judgment for the plaintiffs and against Defendants Dr. Bazargani and Co-Defendant Mr. Paul Bagherpour on June 16, 2005.

Following post-trial motions for altering the judgment and following the production of the transcript of the above mentioned Jury trial the available evidences led into a major changes in proceeding of the above claim due to inconsistency in Mr. Larry Ceisler's statements while under oath. These inconsistencies have

been documented in defendant Dr. Bazargani's letter to plaintiffs dated October 10, 2005 with a copy to defendant Bagherpour's attorney, Mr. Ronald Beifeld and have extensively been discussed in a copy of this letter which is included in the brief of November 21, 2005. Mr. Larry Ceisler as an attorney and a friend of plaintiffs as well as a witness has extensively been involved in proceeding this claim to the judgment. Not only Mr. Larry Ceisler's statements have extensively been used by the plaintiffs in establishing their claims but his contradictory statements while under oath have also been confirmed by the plaintiffs while under oath. Mr. Ceisler Affidavit which was filed by plaintiffs to substantiate his claim is attached (see App. Pgs. 77-78). **Indeed the instant claim has been based upon the conversation held between plaintiffs, defendant Mr. Paul Bagherpour, and Mr. Larry Ceisler where Mr. Ceisler has claimed of being an attorney and doing an interrogation on the behalf of plaintiffs and whatever statement Mr. Bagherpour has delivered while being terrified of this interrogation has been profoundly used by the plaintiffs to establish their claim of discrimination because of Mr. Bagherpour question about their religion.**

REASONS FOR GRANTING THE WRIT

I. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT PRIOR RULINGS UPON THE SETTLEMENT AGREEMENT WHICH HAS TOTALLY DEPRIVED DR. BAZARGANI FROM HER DUE PROCESS RIGHTS FOR DISCOVERY OF THE ABOVE IDENTIFIED CLAIM.

The United States Supreme Court's supervision is necessary because Dr. Bazargani has been deprived from her due process rights by being deprived from proper investigation involving discovery due to settlement agreement. Plaintiffs past the discovery deadline has ignored the settlement agreement and has proceeded to the trial. Dr. Bazargani has timely objected about plaintiffs ignoring the settlement agreement.

The followings are fundamental determinant factors in reference to signing the General Release:

> 1. The following is from plaintiffs' own summary judgment in reference to, Federal Rule of Civil Procedure ("F. R. Civ. P."), Rule 16 conference (see App. Pgs. 35-36) "On January 13, 2005 the Honorable Bruce W. Kauffman held a conference to resolve . . . and Judge Kauffman placed the substance of the new settlement agreement on the record . . . three lawyers who are on separate sides all agree on something, but they have agreed on what those releases are intended to accomplish."

That there was an Order of the judge and a mutual agreement between plaintiffs and Defendant Tawoos Bazargani, M.D. ("Dr. Bazargani") to sign a General Release (see App. Pgs. 81-83).

2. Settlement agreement between Dr. Bazargani and plaintiffs had a fundamental impact upon administering a proper investigation during discovery and therefore proceeding this claim to its merit, such as, an inclusive deposition with realtor NOSH whom independently chose the tenants for the rental property with no consultation with Dr. Bazargani for about ten (10) years could have proven the case by itself, a true and correct copy of this realtor Lease with tenants **Lisa Thurman, Betsy L. Buhl and Leslie Moran is attached (see App. Pgs. 39-41).** Indeed settlement agreement deprived Dr. Bazargani from her due process rights involving discovery and therefore her defenses in litigating the instant case, this fact is well documented in Dr. Bazargani's former attorney's letter in reference to discovery a true and correct copy of this document is attached (see App. Pgs. 42-43).

3. The format for General Release was prepared by Dr. Bazargani's former attorney and the plaintiffs' with no discussion with Dr. Bazargani, nevertheless, Dr. Bazargani signed the exact General Release prepared by both attorneys, notarized her signature before to forward General Release for plaintiffs' signature, a true and correct copy of the General Release is attached (see App. Pgs. 81-83).

4. Plaintiffs have admitted of receiving the signed and notarized General Release on June 10, 2005 which has been prepared by plaintiffs' own attorney, see trial transcript (see App. Pgs. 68-69), but the plaintiffs have refused to sign it without presenting any legal cause for their failure to comply with Pretrial Order, these facts have been documented in trial transcript (see App. Pgs. 69-70).

5. Although, Dr. Bazargani finally signed the General Release which was prepared by attorneys' of both parties and was approved by the plaintiffs, but Dr. Bazargani had very legitimate cause to be concerned about her own safety and being subject to retaliatory behavior and, therefore, to demand that these matters to be included in the language of General Release. Whatever excuses the plaintiffs present about Dr. Bazargani's letter of April 28, 2005 (see App. Pgs. 84-87). In response to plaintiffs' letter of April 25, 2005 in reference to signing General Release the following remains a fundamental factor about Dr. Bazargani's demands in reference to the language of General Release, it was true that defendant Dr. Bazargani has received a serious threat from plaintiffs, that he is a Jewish man and that he belongs to a network which has endless power and that Dr. Bazargani either leases him her apartment or faces the consequences, these are documented in trial transcript (see trial transcript Pg. 2.48). Dr. Bazargani has a tragedy history of being subject to many discriminatory behavior at her work and had had complained against the administration including her immediate

Jewish supervisor which had led into her retaliatory discharge after seventeen years dedicated employment. Consequently while Dr. Bazargani had a legitimate concern about the language of General Release, but plaintiffs while celebrating Dr. Bazargani's attorney's withdrawal blatantly ignored all about the Rule 16 of the Federal Rules of Civil Procedure and rushed into proceeding for hearing. These facts are documented in trial transcript, the followings are from the trial transcript of June 14, 2005:

"THE COURT: Why are we having a trial?

THE COURT: – it was – the case was settled and all that remained to be done was an exchange of releases and that Dr. Bazargani was reluctant to sign release without addition of some language.

But that according to the correspondence I just got this morning – as of June 10th – a few days ago, Dr. Bazargani did sign the release, is that right?

MR. SPRAGUE (plaintiffs' attorney): Your Honor, she did sign a release which we received yesterday morning . . .

THE COURT: Right

MR. SPRAGUE: And had been told that – I think it was now a couple of months ago – that if she failed to settle the case as of a certain date, there would be no settlement. She failed to do that. . . .

THE COURT: Well what is at stake here?

MR. SPRAGUE: Your Honor, in terms of the statutes, I can tell you that –

THE COURT: Oh, I'm not worried about that, I'm talking about – let's be realistic, if you'd agreed to settle, what on the earth difference does it make whether it was settled three weeks ago or today?

MR. SPRAGUE: Well, let – let me tell your Honor where we are in terms of settlement.

We would be perfectly happy as we were years ago to accept the settlement award. . . .

MS. BAZARGANI: Your Honor –

THE COURT: You would just as leave go home and let them fight it out with each other?

MS. BAZARGANI: Yes.

THE COURT: Any problem with that?

MR. SPRAGUE: Your Honor, I think we have crossed that . . . point." **The above documentation from the trial transcript are the entire plaintiffs' arguments about refusing to sign the General Release which was prepared by the plaintiffs' own attorney** (see App. Pgs. 81-83).

It is self explanatory that plaintiffs' language is the omnipotent language. F. R. Civ. P. Rule 16 rules as follows: **"The pretrial order is intended to further the purposes of the conference. As stated by Judge Charles E. Clark": A pre-trial order is an absolute necessity** (Judge Clark,

Clark, Objectives of Pre-Trial Procedure, 1956, 17 Ohio St.L.J. 163, 169.)" see *Montgomery Ward & Co. v. Northern Pac. Terminal Co.*, 17 F.R.D. 52, 55 (D.C.Or. 1955); Christenson, The Pre-Trial Order, 1961, 29 F.R.D. 362, 363. "It further rules as follows: "a party charged with failing to comply carries the burden of showing that in fact he met his obligation under the order. Should the party be unable to do so, various sanction may be imposed", see *Ginns v. Towle*, 361 F.2d 798 (C.A.2d 1966) (see App. Pgs. 35-86).

II. THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULINGS UPON THE WITHDRAWAL OF AN ATTORNEY WITHOUT BEING SUBSTITUTED BY ANOTHER ATTORNEY.

The United States Supreme Court's supervision is necessary about the proper application of the Pennsylvania Rules of Civil Procedure in reference to the withdrawal of the attorney as the representative of the defendant without being substituted by another attorney where defendant has been substantially prejudiced in her defense as a pro se.

1- Mr. Joel W. Todd Esquire's (hereinafter "Mr. Todd") argument about defendant would not be prejudiced because she can obtain a new attorney (see App. Pgs. 58-62) was not justifiable because conceivably no attorney wanted to pick up a defense which had been initiated by another attorney and was left

without the resolution of the defense and indeed Dr. Bazargani despite endless effort could not retain an attorney and suffered substantial prejudice in her defense as pro se.

2- Any argument about the appeal of the Arbitrators' decision is superficial, therefore, unjustifiable, because Mr. Todd was fully aware that co-defendant Mr. Bagherpour had already appealed the Arbitrators' decision and as an attorney he also was fully aware that the appeal of one party will be treated the appeal from all parties, pursuant to Pa. R. Civ. P., see Third Circuit's recent decision in *D'Iorio,* furthermore, any of client's question could have been solved with one interview, which Dr. Bazargani asked for, rather than withdraw (see App. Pgs. 68-72).

3- Dr. Bazargani's medical problems has been supported through clear and convincing evidences of medical certificates, a true and correct copies of medical certificates are attached (see App. Pgs. 44-48).

4- Signing the Mutual Release has been discussed in depth in Argument number one (No. I).

The following rules the withdrawal of the attorney as the representative of the defendant:

F. R. Civ. P. rules as follows: The Model Rules envision that a lawyer must withdraw if "the representation will result in violation of the rules of professional conduct or other law." **Withdrawal, particularly in the course of litigation, is no**

panacea. Courts are often understandably resistant to allowing lawyers to withdraw in the midst of litigation, see *Romano Bros. Beverages Co. v. D'Agostino-Yellow Assoc.*, 1996 U.S. Dist. LEXIS 10730, at 19 (N.D. Ill. 1988) (see App. Pg. 38).

42 Pa. C.S.A. Section 2502 rules as follows: "A court will not permit an attorney to withdraw his entry of appearance nunc pro tunc as of the date he informed his client . . . but it will grant him leave **to withdraw as of the present time if the defendant has failed to pay the attorney any fee or to answer correspondence,** see *Sheaffer v. Trrill*, 31 Pa. D. & C. 463 (1938) (see App. Pgs. 33-34).

ABA Model Rules of Professional Conduct Rule 1.16(d) rules as follows: "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests such as giving reasonable notice to the client, allowing time for employment of other counsel."

Finally, Mr. Todd has documented ABA Model Rules, Rule 1.16(b)(4) as the main cause of action for his withdrawal (see App. Pgs. 58-62), claiming that Dr. Bazargani has been acting repugnant by not signing General Release but the fact has been that Dr. Bazargani very much from pre-trial conference agreed to sign General Release and because of this agreement Dr. Bazargani was deprived from her due process rights for discovery of the instant case (see App. Pgs. 42-43) and she has signed the very General Release which was prepared by plaintiffs' attorney

(see Argument No. I) but also it has been the fact that Dr. Bazargani has received very serious threat from Plaintiffs that he is a Jewish man who belongs to world wide net work which has endless power and that Dr. Bazargani either leases him her apartment or suffers from consequences (see trial transcript Pg. 2.48) which Dr. Bazargani was legitimately concerned about. Mr. Todd also has claimed that Dr. Bazargani would not be prejudiced with his withdrawal which also was not true indeed his withdrawal has prejudiced Dr. Bazargani's defense profoundly and it totally served plaintiffs' interest who recklessly ignored about his agreement to sign the General Release and rushed in to hearing with Dr. Bazargani as a pro se while celebrating her attorney's withdrawal (see App. Pgs. 68-70).

III. THE PETITION SHOULD BE GRANTED BECAUSE THIS COURT'S PRIOR RULINGS CONFLICTS WITH THE OPINION BELOW UPON A CRIME COMMITTED BY PLAINTIFF AND THE WITNESS BY DELIVERING INCONSISTENT STATEMENTS WHILE UNDER OATH.

18 United States Code Annotated ("18 U.S.C.A.") Section 1621 rules as follows: Whoever –

(3) having taken an oath before a competent tribunal, officer or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration,

deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(4) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under Section 1746 of title 28 United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years or both. This section is applicable whether the statement or subscription is made within or without the United States.

18 U.S.C.A. Section 1621, note 5: "**Purpose.**" Purpose of this section is to keep the courts free from pollution of perjury." *Bronston v. U.S., U.S.N.Y.,* 93 S.Ct. 595, 409 U.S. 352, 34 L. Ed. 2d 568 (1973); it further rules as follows: "Purpose of this section is to keep process of justice free from contamination of false testimony; it is for the wrong done to the courts and the administration of justice that punishment is given . . . ", *U.S. v. Manfredonia,* 414 F.2d 760 (C.A.2 (N.Y.) 1969).

18 U.S.C.A. Section 1621, note 19: "**Declaration or certificates.**" The word "declaration" and "certificates" were not used in R. S. Section 5392 . . . but were used in the ordinary and popular sense, to signify statements of material facts sworn to and

subscribed by party charged with perjury, and if he did not believe such matters to be true when he swore to and subscribed to the statement that they were true, he was guilty of perjury as declared therein. *U.S. v. Ambrose, U.S. Ohio,* 2 S.Ct. 682, 108 U.S. 336, 27 L.Ed. 746 (1883).

18 U.S.C.A. Section 1621, note 21: "**Completion of offense.**" Deliberate material falsification under oath constitutes crime of "perjury" and crime is complete when a witness statement has once been made. *U.S. v. Norris,* 57 S.Ct. 535, 300 U.S. 564, 81 L.Ed. 808 (U.S. Neb. 1973). See also, *Fotie v. U.S.*, 137 F.2d 831 (C.C.A. Mo. 1943).

Following post-trial motions and following the production of trial transcript and gathering all the related evidences lead to the discovery that, there has been an astonishing inconsistency in Mr. Larry Ceisler's statements, *under oath,* in reference to his law school education, and having a BAR number, while in cross examination with Dr. Bazargani's former attorney, comparing to his cross examination with Dr. Bazargani, during trial de novo. These matters have been documented in defendant Tawoos Bazargani, M.D.'s letter to plaintiffs dated October 10, 2005. A copy of this letter has been forwarded to defendant Mr. Bagherpour's attorney Mr. Ronald Beifeld. These contradictory statements have also been repeated by plaintiffs while under oath. The followings are from Mr. Kenneth Snyder's deposition transcript on December 17, 2003:

"Q- who is Larry Ceisler?

A- A friend of mine.

Q- He's a lawyer?

A- Yes."

As it is evident from the above documentation that plaintiffs and their witness Mr. Larry Ceisler in establishing their claim have been in violation of 18 U.S.C.A. Section 1621. It is self explanatory that out come of this case is far from routine procedure about proceeding a claim. It is also self explanatory that this claim must become subject to further verification, investigation and proper penalty following the admission of crimes. This matter was claimed following trial after gathering the related information and documents.

IV. THE PETITION SHOULD BE GRANTED BECAUSE THIS COURT'S PRIOR RULINGS CONFLICTS WITH THE OPINION BELOW UPON PLAINTIFFS' FAILURE TO ESTABLISH ANY RELATED LIABILITY AGAINST DEFENDANT TAWOOS BAZARGANI.

Plaintiffs during the entire litigation of the above claim including de novo jury trial have failed to establish any liability against defendant Dr. Bazargani but to claim that Dr. Bazargani should be held liable for defendant Mr. Paul Bagherpour's question about plaintiff Mr. Snyder's religion while conversing

about the people's religion including Dr. Bazargani's religion. It is the law that when an "agent acts in his or her own interest and commits a tortious act on his own behalf in a matter which is beyond the scope of his employment, the principle can not be held liable for the agent's tortious act.", *Swarmer v. Mitchell,* 38 Pa. D. & C. 4th 153, 157 (Berk Cty. 1997) (citing *Atkinson v. Haug,* 622 A.2d 983 (Pa. Super. 1993). See also *Todd v. Skelly,* 120 A.2d 906 (Pa. 1956). Dr. Bazargani interviewed and referred the Snyders as an proper candidate to Mr. Bagherpour to look for the property but as soon as Dr. Bazargani learned about Snyder's dog whom they consider as a part of their family, Dr. Bazargani's interest, therefore, her authority in this business was terminated and Dr. Bazargani in no uncertain way made it clear to Mr. Bagherpour that she has kept this apartment clean from the animal reach for over two decades and would continue to do so. Consequently, whatever interest and affinity Mr. Bagherpour had in Snyders family and whatever conversation they had about Dr. Bazargani's religion or Mr. Snyder's religion was totally beyond Dr. Bazargani's interest therefore her authority.

V. THE PETITION SHOULD BE GRANTED BECAUSE THIS COURT'S PRIOR RULINGS CONFLICTS WITH THE OPINION BELOW UPON RAISING QUESTION ABOUT DR. BAZARGANI'S TIMELY FILED BRIEF WHICH WAS IN COMPLIANCE WITH PA. RULE OF CIVIL PROCEDURE AND BECAUSE DR. BAZARGANI HAS UNILATERALLY BEEN SCRUTINIZED FOR TIMING OF HER LEGAL INTERACTION.

The lower court, Honorable John P. Fullam on October 17, 2005 issued his Order and Granted defendant's motions for Stay of Proceedings (see App. Pgs. 28-29). On January 11, 2006 Honorable John P. Fullam, following plaintiff's motion for Reconsideration of his Order of October 17, 2005 vacated his above mentioned Order of October 17, 2006 and he further Ordered for stay of execution of the judgment upon posting a ten thousand dollars ($10,000.00) supersedeas bond by defendants to be responded by twenty (20) days (see App. Pg. 31). Pa. Rule of Civil Procedure as well as Federal Rule of Civil Procedure rule that the motion for Reconsideration of an order should be filed by ten (10) days from the date of order except as otherwise provided by the court. Defendant Dr. Bazargani responded to Honorable John P. Fullam's Order of January 11, 2006, accordingly, within twenty (20) days from the recording date (which was January 12, 2006) and by February 1, 2006 she filed her motion for Reconsideration of the Order of January 11, 2006. Dr. Bazargani's motion for Reconsideration was not ruled and recorded until March 13, 2006

(see App. Pg. 32), this ruling date which was a fundamental factor for appealing Order of January 11, 2006 to the Court of Appeal, regardless of the cause for the ruling, has totally been ignored in Ms. Laura L. Green's letter of May 2, 2006. Consequently, within thirty (30) days from March 13, 2006, on April 10, 2006 Dr. Bazargani appealed the final order of January 11, 2006 which denied Dr. Bazargani's motions for Stay of Proceedings (see App. Pgs. 30-31).

Furthermore, Dr. Bazargani argues that she has been unilaterally scrutinized for timing of her legal interaction because there has been some irregularity of legal interaction on the part of plaintiffs also (see Docket Entries). Dr. Bazargani's post-trial motion was filed on June 27, 2005 and was entered the record by June 28, 2005. Plaintiff's response to this motion was filed after seventeen (17) days on Thursday July 14, 2005.

V. THE PETITION SHOULD BE GRANTED BECAUSE THIS COURT'S PRIOR RULINGS CONFLICTS WITH THE OPINION BELOW UPON NOT DENYING THE PLAINTIFFS' MOTION FOR ATTORNEY FEES OF THE ABOVE IDENTIFIED CLAIM.

Following the trial of the instant claim on June 14-15, 2005 plaintiffs on July 1, 2005 pursuant to Fair Housing Act, 42 U.S.C. Section 3613(c)(2) and the Pennsylvania Human Relation Act, 43 P.S. Section 962(c.2) filed a motion for Attorney fees for a total amount of $112,892 which was struck by defendant

Paul Bagherpour's motion filed on July 11, 2005 (see Docket Entries). The following rules of Pennsylvania Rules of Civil Procedures and Federal Rules of Civil Procedures govern the jurisdiction involving attorney fees in civil cases:

1. 42 Pa. C.S.A. Section 2503 rules as follows: "**American rule**" provides that parties to litigation are responsible for their own counsel fees, unless otherwise provided by statutory authority, agreement of the parties or some other recognized exception "*Mrozec v. Eiter*, 805 A.2d 535 (Super. 2002), appeal denied, 825 A.2d 639, 673 Pa. 691. The same rule further it rules as follows:" Under this section, litigant is entitled to attorney fees if he can establish that action was brought arbitrarily, vexatiously or in bad faith. *P. Liedtka Trucking Inc. v. James H. Hartman and Son Inc.*, 537 F. Supp. 381, affirmed, 709 F.2d 1491 (E.D. Pa. 1982). The above identified Rule further categorizes "Right of Participants to Receive Counsel Fees" in ten (10) distinct items involving the different categories of litigation and the item number nine (No.9) covers the entitlement of the attorney fees in private litigation as follows: "(9) Any participant who is awarded counsel fees because the conduct of the another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith."

2. The following Federal Rules of Civil Procedure govern the entitlement of the attorney fees in litigations: Rule 54.171[2][c][i] rules as follows: "Liability for Fees May Be Imposed on Counsel or Litigant Who Acts in Bad Faith." When a party acts

"in bad faith, vexatiously, wantonly, or for oppressive reasons," the court may employ its inherent equitable power to award attorney fees as sanction. Such a fee award is permissible under the bad faith exception to the **American Rule,** and its purpose is to compensate the wronged party, punish the wrongdoer, and protect the integrity of the court. *Association of Flight Attendants v. Horizon Air Indus., Inc.*, 976 F.2d 541, 549 (9th Cir. 1992). Further the Rule 54.171[2][c][ii] rules that "Exception Applies Only to Conduct Relating to Litigation," *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-51, 111 S. Ct. 2123, 2132-2136, 115 L. Ed. 27 (1991).

CONCLUSION

For the foregoing reasons Defendant Tawoos Bazargani, M.D. prays this Honorable Court that to vacate the jury verdict and judgment in this case and to grant Defendant a new trial with further investigations and verifications of the issues at hand.

Respectfully submitted,

TAWOOS BAZARGANI, M.D., Pro se
40 Old Lancaster Road
No. 406
Merion, PA 19066
215-551-3135

Dated September 20, 2007

APPENDIX A

NOT PRECEDENTIAL

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NOS. 06-2396, 05-4051 and 05-3817

KENNETH SNYDER; JACQUELINE SNYDER
Appellees in Nos. 06-2396, 05-4051 and 05-3817

v.

TAWOOS BAZARGANI; PAUL BAGHERPOUR

Tawoos Bazargani, Appellant in
Nos. 06-2396 and 05-4051
Paul Bagherpour, Appellant in No. 05-3817

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civil Action No. 02-cv-08845)
District Judge: Hon. John P. Fullam

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 15, 2007

BEFORE: McKEE, STAPLETON and NYGAARD
Circuit Judges

(Filed: June 22, 2007)

OPINION OF THE COURT

STAPLETON, Circuit Judge.

Appellees Kenneth and Jacqueline Snyder brought this action alleging that appellants Tawoos Bazargani and Paul Bagherpour, in violation of the federal Civil Rights Act, the federal Fair Housing Act ("FHA") and Pennsylvania's Human Relations Act ("PHRA"), inquired regarding the Snyders' religious affiliation and thereaafter refused to rent them a condominium because they were Jewish. Bazargani was the owner of the condominium; she had asked Bagherpour, a friend, to assist her in finding a tenant.

I.

Prior to trial, the District Court entered a partial summary judgment against Bagherpour on the issue of his liability under the PHRA. Its ruling was as follows:

> The Pennsylvania Human Relations Act provides: "It shall be an unlawful discriminatory practice . . . for any person to . . . make any inquiry or elicit any information . . . concerning religious creed or ancestry – in connection with the lease of any housing accommodation." 43 P.S. § 955(h)(6). It is conceded that, on December 8, 2000, in the course of a telephone conversation with plaintiff Kenneth Snyder, Mr. Bagherpour did in fact ask what the Snyders' religious affiliation was. Since that inquiry violated the statute, plaintiffs are entitled to partial

> summary judgment on liability, to that extent, against the defendant Bagherpour."

App. at 3.

After a two-day trial, the jury answered the following interrogatories in the following manner:

> THE COURT: To your first question:
>
> Did Dr. Bazargani decline to rent the condominium to plaintiffs because of their religious affiliation?
>
> You say: Yes.
>
> No. 2:
>
> In asking – Mr. Bagherpour did ask about plaintiffs' religion. In asking that question, was Mr. Bagherpour seeking information which would affect plaintiff's suitability as tenants?
>
> You say: Yes.
>
> 3:
>
> By asking about plaintiffs' religion, Mr. Bagherpour violated the Pennsylvania Humans Relations Act: Is Dr. Bazargani also liable for that violation, that is, was Mr. Bagherpour her agent acting within the scope of his agency?
>
> You say: Yes.
>
> And No. 4:

> State the amount of compensatory damages sustained by plaintiffs as a result of the violation or violations you have found.
>
> You say: $40,000.00
>
> And No. 5:
>
> State the amount of punitive damages, if any, to be paid by each defendant.
>
> You say: Dr. Bazargani, $20,000.00 and Mr. Bagherpour, $30,000.00
>
> Do you all agree on those answers?
>
> THE JURY: Yes.

App. at 748-49.

The District Court denied motions of both defendants for a new trial. While finding the jury's verdict "extremely generous," the Court was "not persuaded that there [was] justification for setting the verdict aside." App. at 10. In response to the defendants' argument that it had erred in submitting the punitive damage issue to the jury, the Court ruled that punitive damages were appropriate under the FHA:

> Since the jury, in answers to interrogatories, expressly found that the defendant Agent had violated the terms of the statute by making the prohibited inquiry about religion, and that plaintiffs' religion was a substantial factor in the ultimate decision not to lease the property to them, it was entirely proper to submit the issue of punitive damages to the jury. *Alexander v. Riga,* 208 F.3d

> 419, 431 (3d Cir.2000) [(holding that punitive damages are available for intentional violations of the FHA)].

App. at 3. Both defendants appealed.

While these two appeals were pending (*i.e.*, Nos. 05-3817 and 05-4051), Bazargani filed a third appeal from a supersedeas order (No. 06-2396). This Court advised the Snyders that, if they obtained an order from the District Court waiving the bond requirement pending a determination by this Court on the merits of the underlying appeals at 05-4051 and 05-3817, Bazargani's appeal at 06-2396 would be moot. The Snyders obtained such an order from the District Court temporarily waiving any bond requirement pending this Court's ruling on the merits of Bazargani's appeal at 05-4051 and Bagherpour's appeal at 05-3817. Accordingly, Bazargani's appeal at 06-2396 will be dismissed as moot.

II.

Appellant Bagherpour insists in his appeal that: (1) the District Court erred in granting partial summary judgment on the issue of his liability under the PHRA; (2) there is insufficient evidence to support the jury's finding of discriminatory intent; (3) there is insufficient evidence to support the jury's finding that the Snyders sustained actual injury; (4) the District Court erred in not instructing the jury that it could award punitive damages for "intentional" discrimination on the basis of religion only if that discrimination

was "wanton and reckless" (App. at 746); and (5) plaintiffs' counsel, in his closing remarks, improperly asked the jury to act as "Attorney Generals" and "send a message" that discrimination must be punished. We find each of these arguments unpersuasive.

We do not understand Bagherpour to dispute that he asked the Snyders about their religious affiliation in connection with the leasing of a housing accommodation. Nor does he cite us to any authority for the proposition that 43 P.S. § 955(h)(6) does not make this an unlawful discriminatory practice without regard to the purpose of the inquiry. We agree with the District Court that the Supreme Court of Pennsylvania would apply § 955(h)(6) in accordance with its plain meaning and that partial summary judgment was appropriate.

While Bagherpour did not admit that in asking about the Snyders' religious affiliation he was "seeking information which would affect plaintiffs' suitability as tenants," there was ample circumstantial evidence to support the jury finding to that effect. Similarly, the record contains ample direct and circumstantial evidence to support the jury's finding that the Snyders sustained actual injury in the form of mental and emotional distress. While we agree with the District Court that the jury's award of compensatory damages of $40,000 to the two plaintiffs was generous, we also agree that it is not so excessive that it can properly be set aside.

The District Court instructed the jury that it could award punitive damages if it concluded that Bagherpour intentionally asked about the Snyders' religious affiliation in order to secure information that would affect their suitability as tenants and that Bazargani intentionally declined to rent the condominium to the Snyders because of their religious affiliation. The District Court declined the request of Bagherpour's counsel to instruct the jury that the defendants' conduct would have to be "not only intentional" but "wanton and reckless." App. at 746. While it is true that "wanton and reckless" misconduct can sometimes serve as a *surrogate* for intentional misconduct, giving rise to punitive damage liability, both are not required. Indeed, wanton disregard and recklessness are generally regarded as inconsistent with intentional misconduct. The District Court did not abuse its discretion in declining to give it.[1]

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[1] We are mindful of the fact that punitive damages are not available under the PHRA. *See Hoy v. Angelone,* 720 A.2d 745 (Pa.1998). The plaintiffs proceeded here on the basis of both the PHRA and the federal FHA, however, and the District Court's instructions on punitive damage were consistent with the law concerning the availability of punitive damages under the FHA. *See Alexander v. Riga,* 208 F.3d 419, 431 (3d Cir.2000) ("[B]ecause of the jury's finding of intentional discrimination [in violation of the FHA], the plaintiff need not also demonstrate that the conduct was particularly egregious or malicious in order to obtain punitive damages."). We note that Bagherpour does not take issue with the District Court's conclusion that the intentional discrimination found by the jury was a violation of the Fair Housing Act, and the jury's verdict regarding punitive

(Continued on following page)

We do not agree with Bagherpour that the closing argument of plaintiffs' counsel asked the jury to reach "a decision based upon issues outside the evidence and testimony of [this] case." Bagherpour Br. at 13. Nor do we regard his remarks referencing "Attorney Generals" and "sending a message" to be inappropriate in an FHA case seeking punitive damages. *Alexander v. Riga,* 208 F.3d 419, 425-26 (3d Cir.2000) (noting Congress's reliance on "private attorneys general" to vindicate a policy "of the highest priority" embodied in the FHA); *Settlegoode v. Portland Pub. Schools,* 371 F.3d 503, 519 (9th Cir.2004) ("Reminding the jury that they have the capacity to deter defendants and others similarly situated is certainly legitimate where punitive damages are at stake."); *The Emery-Warehouse Co. v. Rhode Island Hospital Trust National Bank,* 757 F.2d 399, 410 (1st Cir.1985) ("send a message" closing statement appropriate because "counsel is permitted to argue the need for an award of punitive damages as a deterrent against similar conduct by this defendant or by others").

III.

Bazargani, proceeding *pro se,* contends that the judgment of the District Court against her must be reversed because (1) one of the Snyders' witnesses, Larry Ceisler, committed perjury during his cross

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damages can thus stand based on that Act even though not authorized by the PHRA.

examination; (2) she and the Snyders had reached a settlement agreement prior to trial; and (3) Bagherpour ceased to be her agent "as soon as [she] learned about the Snyders' dog" because she had made it clear to Bagherpour that she would not permit an animal in her property. Bazargani Br. at p. 16. We are not persuaded.

Ceisler testified on cross examination that he had graduated from law school, passed the bar, secured a bar number, and practiced for approximately four years. Bazargani insists that Ceisler earlier testified in an arbitration proceeding that he had not secured a bar number. She did not, however, choose to cross examine him at trial about this alleged prior inconsistent statement. Moreover, Ceisler's status with the bar had nothing to do with his testimony and was not material to any issue presented by the facts of this case. In all events, a prior inconsistent statement of a witness clearly provides no basis for overturning a jury's verdict.

As early as the Fall of 2004, the Snyders offered to settle their claims against Bazargani with an exchange of mutual releases. The parties thereafter exchanged forms of release, but they could not agree upon one that Bazargani was willing to sign. The last form she submitted to the Snyders contained language the District Court described as "virtually incomprehensible." App. at 2. As trial approached, the Snyders offered Bazargani a final opportunity to settle for an exchange of mutual general releases, setting a deadline of April 29, 2005. On May 4, 2005,

the Snyders notified Bazargani that, not having received an executed release, they would pursue their claims at trial. On June 10, 2005, five days before trial, Bazargani executed and submitted the form of general release that had been given to her in the Fall of 2004. She then proceeded to trial without raising settlement as a defense. Clearly, the Snyders' offer of settlement had been withdrawn before Bazargani executed a release and, in any event, Bazargani is not in a position after the jury's verdict to make a contrary claim.

With respect to Bagherpour's agency, the jury determined that he was Bazargani's "agent acting within the scope of his agency." App. at 748. There is ample evidence to support this finding, and it cannot be disturbed. Moreover, the judgment does not rest solely on this finding. The jury also concluded that Dr. Bazargani personally "decline[d] to rent the condominium to plaintiffs because of their religious affiliation," *id.*, which is an independent violation of the FHA, 42 U.S.C. § 3604(a), and the PHRA, 43 P.S. 955(h)(1).

IV.

The judgment of the District Court in No. 05-3817 and 05-4051 will be affirmed. The appeal in No. 06-2396 will be dismissed as moot.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NOS. 06-2396, 05-4051 and 05-3817

KENNETH SNYDER; JACQUELINE SNYDER
Appellees in Nos. 06-2396, 05-4051 and 05-3817

v.

TAWOOS BAZARGANI; PAUL BAGHERPOUR

Tawoos Bazargani, Appellant in
Nos. 06-2396 and 05-4051
Paul Bagherpour, Appellant in No. 05-3817

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civil Action No. 02-cv-08845)
District Judge: Hon. John P. Fullam

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 15, 2007

BEFORE: McKEE, STAPLETON and NYGAARD
Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern

District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on June 15, 2007.

On consideration whereof, it is now here ORDERED AND ADJUDGED by this Court that the appeal at No. 06-2396 is DISMISSED as moot. The judgment of the said District Court in No. 05-4051 entered June 16, 2005, is AFFIRMED. The judgment of the said District Court in No. 05-3817 entered August 1, 2005, is AFFIRMED. Costs taxed against appellants. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/Marcia M. Waldron
Clerk

DATED: June 22, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH & JACQUELINE SNYDER	:	
v.	:	CIVIL ACTION
TAWOOS BAZARGANI PAUL BAGHERPOUR	:	NO. 02-8845

ARBITRATION AWARD
PURSUANT TO LOCAL RULE 53.2

(Filed Sep. 21, 2004)

AND NOW this 20th day of Sept. 04, we the undersigned arbitrators having been duly certified and sworn and having heard the above captioned civil action on September 20, 2004, do hereby make the following award pursuant to Local Civil Rule 53.2:

We find in favor of the Plaintiffs in the amount of ten thousand dollars ($10,000) against the defendant, Paul Bagherpour, only. We find in favor of Tawoos Bazargani.

/s/ **[Illegible]**
Chairman

/s/ **[Illegible]**
Arbitrator

/s/ **[Illegible]**
Arbitrator

NOTICE

This award will become a final judgment of the court without the right of appeal, unless a party files with the court a demand for a trial *de novo* within thirty days after the entry of the arbitration award.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH SNYDER and JACQUELINE SNYDER	:	CIVIL ACTION
	:	NO. 02-08845-JF
v.	:	
TAWOOS BAZARGANI and PAUL BAGHERPOUR	:	

MEMORANDUM AND ORDER

Fullam, Sr. J. (Filed May 26, 2005)

Plaintiffs were negotiating for the rental of a condominium property owned by the defendant Bazargani. The defendant Paul Bagherpour was the rental agent handling the transaction on behalf of Dr. Bazargani. Plaintiffs brought this action against the defendants, alleging violations of the Pennsylvania Human Relations Act (PHRA) asserting that Mr. Bagherpour inquired about plaintiffs' religious affiliation, and thereafter the defendants refused to rent plaintiffs the property.

The case was, in due course, referred to arbitration. After the hearing, the arbitrators entered an award in favor of the plaintiffs and against the defendant Bagherpour only; Dr. Bazargani was exonerated.

Bagherpour filed a timely request for a trial *de novo,* but plaintiffs did not. The case is now scheduled for a jury trial in June.

The administration of this case has become complicated by virtue of various extraneous matters. Dr. Bazargani has, at various times, been represented by counsel, but her counsel has been permitted to withdraw his appearance, and Dr. Bazargani is now acting *pro se*. It seems that the final disagreement between Dr. Bazargani and her counsel stemmed from the fact that Dr. Bazargani wanted him to appeal the arbitrator's decisions, even though she had won. At a pretrial conference conducted by the judge to whom this case was originally assigned, everyone tried to explain to Dr. Bazargani that she should quit while she was ahead. It was also made clear that the plaintiffs were satisfied with the arbitrator's award in all respects, and that, if there was to be a trial *de novo,* the defendant Bagherpour preferred to have Dr. Bazargani dismissed from the case, so that the trial could dispose solely of the issues between plaintiffs and Mr. Bagherpour. Ultimately, at that pretrial conference, it appeared that the case had been settled, conditioned upon an exchange of releases between plaintiffs and Dr. Bazargani, but she ultimately refused to sign the releases unless certain additional language were inserted. Her proposed additional language is virtually incomprehensible, but can be interpreted as barring any future claims of any kind, even if unrelated to the rental of the condominium, and based upon conduct which occurs in the future. For obvious reasons, plaintiffs declined to adopt that proposed provision.

The court is now confronted with two motions: (1) a motion by defendant Bazargani "for a superseding scheduling order with new dates and deadlines" (in effect, a request for a continuance of the trial) and (2) plaintiffs' motion for summary judgment as to liability against the defendant Bagherpour.

The Pennsylvania Human Relations Act provides: "It shall be an unlawful discriminatory practice . . . for any person to . . . make any inquiry or elicit any information . . . concerning religious creed or ancestry – in connection with the lease of any housing accommodation." 43 P.S. § 955(h)(6). It is conceded that, on December 8, 2000, in the course of a telephone conversation with plaintiff Kenneth Snyder, Mr. Bagherpour did in fact ask what the Snyders' religious affiliation was. Since that inquiry violated the statute, plaintiffs are entitled to partial summary judgment on liability, to that extent, against the defendant Bagherpour.

As to the defendant Dr. Bazargani, there may well be a factual dispute as to whether, at the time the inquiry about religion occurred, Mr. Bagherpour was still authorized to negotiate with the Snyders; it is conceivable that Dr. Bazargani might not be vicariously liable for Bagherpour's actions. I need not resolve that issue, however, since the arbitration award in favor of Dr. Bazargani has not been appealed. She is entitled to the entry of judgment in her favor based on the arbitrator's award. This renders moot her application for a continuance of the trial, and also renders moot her purported concerns about

the language of the proposed general release: the judgment in her favor stands as *res judicata,* and bars any and all claims which plaintiffs might assert against her in connection with the lease negotiations.

An Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH SNYDER and JACQUELINE SNYDER	:	
v.	:	CIVIL ACTION
TAWOOS BAZARGANI and PAUL BAGHERPOUR	:	NO. 02-08845-JF

ORDER

AND NOW, this 26th day of May 2005, IT IS ORDERED:

1. The motion of defendant Tawoos Bazargani, M.D. "To Request for the Superseding Scheduling Order with New Dates and Deadlines for the Above Identified Claim Because Plaintiffs Refused to Sign the General Release with Defendant Tawoos Bazargani, M.D." is DISMISSED as moot.

2. JUDGMENT is ENTERED in favor of the defendant Tawoos Bazargani and against the plaintiffs Kenneth and Jacqueline Snyder, based upon the award of the arbitrators.

3. Unless settled in the interim, the case will proceed to trial as between plaintiffs and the defendant Paul Bagherpour on June 15, 2005.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH SNYDER and JACQUELINE SNYDER	:	CIVIL ACTION
v.	:	NO. 02-8845-JF
TAWOOS BAZARGANI and PAUL BAGHERPOUR,	:	

ORDER

(Filed Jun. 7, 2005)

AND NOW, this 6th day of June 2005, IT IS ORDERED that:

1. Plaintiff's Motion for Reconsideration is GRANTED. That part of the Court's May 26, 2005 order that entered judgment in favor of Defendant Tawoos Bazargani is VACATED. Dr. Bazargani is again a Defendant in the case.

2. The motion of defendant Tawoos Bazargani, M.D. "To Request for the Superseding Scheduling Order with New Dates and Deadlines for the Above Identified Claim Because Plaintiffs Refused to Sign General Release with Defendant Tawoos Bazargani, M.D.," which was dismissed as MOOT is REINSTATED and DENIED on the merits.

3. The Motion of Defendant Paul Bagherpour for Reconsideration is DENIED.

4. Unless settled in the interim, the case will proceed to trial as to all parties on June 14, 2005.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH SNYDER and JACQUELINE SNYDER	:	
v.	:	CIVIL ACTION
TAWOOS BAZARGANI and PAUL BAGHERPOUR	:	NO. 02-8845

ORDER

(Filed Jun. 16, 2005)

AND NOW, this 16th day of June, 2005, in accordance with the jury verdict by interrogatories rendered on June 15, 2005,

IT IS ORDERED that Judgment be and the same is hereby entered in favor of Plaintiffs Kenneth and Jacqueline Snyder and against Defendants Tawoos Bazargani and Paul Bagherpour in the sum of $90,000.00.

BY THE COURT:

ATTEST:

Rosalind Burton-Hoop
Deputy Clerk

COPIES BY MAIL ON 6/16/05

TO: Thomas E. Groshens, Esquire
Ronald B. Beifeld, Esquire
Tawoos Bazargani

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH SNYDER and JACQUELINE SNYDER	:	
v.	:	CIVIL ACTION
TAWOOS BAZARGANI and PAUL BAGHERPOUR	:	NO. 02-08845-JF

MEMORANDUM AND ORDER

(Filed Jul. 29, 2005)

Fullam, Sr. J July 28, 2005

The defendant Tawoos Bazargani (hereinafter referred to as "Owner") is the owner of a certain condominium property in Philadelphia which she leases to tenants. The defendant Paul Bagherpour (hereinafter referred to as "Agent") acted as her real estate agent in leasing the property. Plaintiffs sought to lease the condo, which had been advertised as available for rent. After plaintiff Kenneth Snyder expressed his willingness to lease the property, the defendant Agent asked Mr. Snyder what his religious affiliation was, and Mr. Snyder replied that he was Jewish. A few days later, the Snyders were informed that the Owner would not lease the property to them. They brought this action for violation of the Fair Housing Act and the equivalent Pennsylvania statute. The jury awarded substantial damages against both defendants. Both defendants have filed motions for a new trial.

The defendant Owner was not represented by counsel at trial. She had been represented by counsel at earlier stages of this litigation. The case went to arbitration. The arbitrators rendered a decision favorable to the plaintiffs. At that point, in various conferences before another judge of this court, to whom the case was then assigned, counsel reached a modest settlement, contingent upon the exchange of releases. Contrary to her counsel's advice, the defendant Owner rejected the settlement, and insisted upon proceeding to the *de novo* trial which plaintiffs were entitled to, since they had appealed from the arbitration award. Her counsel then withdrew, and she has proceeded *pro se* since then.

While the case was pending, plaintiffs' counsel again confirmed to the defendants that plaintiffs were willing to carry out the agreed settlement, provided the defendants signed the required release by a specified date. The defendant Owner did not agree, and the case proceeded to trial.

The jury found both defendants liable, and awarded $40,000 in compensatory damages, plus $20,000 in punitive damages against the Owner, and $30,000 in punitive damages against the defendant Agent.

In her *pro se* "Motions for a New Trial and to Alter the Judgement," the defendant Owner asserts that the trial should not have occurred and its results should now be set aside, because, five days before trial, she finally signed the requested release.

Although not material to deciding the present motion, it bears mention that the Agent's trial counsel, in his closing argument, saw fit to make arguments which really were improper. Be expressed his personal view that the anti-discrimination statutes were a bad idea, and that a property owner should be permitted complete freedom in deciding whom to accept as tenants. He also expressed his personal opinion by scoffing at the testimony of the wife-plaintiff that, because she had long been exposed to discrimination in her earlier life, she had experienced emotional trauma as a result of plaintiffs' rejection by the defendants. His complaint about his opponent's argument rings hollow.

Finally, while the jury's verdict was extremely generous, I am not persuaded that there is justification for setting the verdict aside.

For all of the foregoing reasons, defendants' post-trial motions will be denied.

An Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH SNYDER and JACQUELINE SNYDER	:	
v.	:	CIVIL ACTION
TAWOOS BAZARGANI and PAUL BAGHERPOUR	:	NO. 02-08845-JF

ORDER

(Filed Jul. 29, 2005)

AND NOW, this 28th day of July 2005, upon consideration of defendants' post-trial motions, and plaintiffs' responses, IT IS ORDERED:

That the defendants' post-trial motions are DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH and JACQUELINE SNYDER Plaintiffs, v. TAWOOS BAZARGANI and PAUL BAGHERPOUR, Defendants.	:	CIVIL ACTION NO. 02-8845

ORDER

(Filed Jul. 29, 2005)

AND NOW, this 28th day of July 2005, upon consideration of Plaintiffs' Motion for an Award of Attorney Fees and Expenses and Defendant, Bagherpour's Motion to Strike Plaintiffs' Motion.

IT is hereby ORDERED that the Motion to Strike is DENIED. Defendant, Bagherpour may file and opposition to Plaintiffs' Motion for an Award of Attorney Fees and Expenses within ten (10) days of the date of this Order.

BY THE COURT:

/s/ John P. Fullam, Sr. J.
John P. Fullam, Sr. J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH and JACQUELINE SNYDER 390 Shelbourne Lane Phoenixville, PA 19460 Plaintiffs	*	
v.	*	
TAWOOS BAZARGANI 6351 Overbrook Avenue Philadelphia, PA. 19151-2627 and PAUL BAGHERPOUR 738 North Broad Street Woodbury, NJ 08106 Defendants	*	No. 02-8845

ORDER

(Filed Oct. 17, 2005)

AND NOW 17th of October 2005, following consideration of Defendant Tawoos Bazargani, M.D.'s Motion For Stay of Proceedings Pursuant To F. R. A. P. Rule 8(a)(1)(A) it is hereby ORDERED and DECREED that the motion ~~was~~ [is [illegible]] granted.

/s/ John P. Fullam, S.J.
John P. Fullam, S.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH and JACQUELINE SNYDER Plaintiffs	:	
vs.	:	No. 02-8845
TAWOOS BAZARGANI and PAUL BAGHERPOUR, Defendants	:	

ORDER

(Filed Oct. 17, 2005)

_____AND NOW, this 17th day of ~~August~~ [October], 2005, upon consideration of Defendant, Paul Bagherpour's, Motion for Stay of Proceedings, it is hereby ORDERED that the said Motion is GRANTED, and Plaintiffs' Motion for Award of Attorney's Fees and Expenses is hereby STAYED pending further Order of this Court.

/s/ John P. Fullam
John P. Fullam, Senior Judge

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH and JACQUELINE SNYDER	:	
Plaintiffs,	:	**Civil Action**
v.	:	**No. 02-8845**
TAWOOS BAZARGANI and PAUL BAGHERPOUR,	:	**Hon. John P. Fullam**
Defendants.	:	

ORDER

(Filed Jan. 11, 2006)

AND NOW, this 11th day of January, 2005, upon consideration of Plaintiffs' Motion for Reconsideration and Plaintiffs' Response to defendant Paul Bagherpour's Motion for a Stay brought under Rule 62(d), and all responses thereto, it is hereby **ORDERED** that this Court's October 17, 2005 Orders, granting defendants' motions to stay proceedings, are hereby **VACATED**.

It is further **ORDERED** that the defendants Paul Bagherpour and Tawoos Bazargani will be granted a stay of ~~proceedings~~ [execution of the Judgment] pending appeal upon their posting, either individually or jointly, within ~~ten~~ [twenty (20)] days of the date of this Order, a supersedeas bond or other form of security acceptable to the Clerk and to the

Court in the total amount ~~$250,000~~ [ten thousand dollars ($10,000.00) [illegible]].

BY THE COURT:

/s/ John P. Fullam

John P. Fullam, S.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH and JACQUELINE SNYDER 390 Shelbourne Lane Phoenixville, PA 19460 Plaintiffs	*	
v.	*	
TAWOOS BAZARGANI 40 Old Lancaster Road, No. 406 Merion, PA. 19066 and PAUL BAGHERPOUR 738 North Broad Street Woodbury, NJ 08106 Defendants	*	No. 02-8845

ORDER

(Filed Mar. 10, 2006)

AND NOW 9th of March 2006, upon consideration of "Defendant Tawoos Bazargani, M.D.'s Motion for Reconsideration of The Order Posting A Supersedeas Bond for Ten Thousand Dollars" hereby ORDERED and DECREED that the Defendant's motion ~~was granted~~ [is DENIED [illegible]].

/s/ John P. Fullam

APPENDIX B

42 Pa.C.S.A. § 2501

* * *

9. Withdrawal of appearance

An attorney cannot withdraw his appearance after it has once been entered of record without leave of court.

* * *

A court will not permit an attorney to withdraw his entry of appearance nunc pro tunc as of the date he informed his client

* * *

but it will grant him leave to withdraw as of the present time if the defendant has failed to pay the attorney any fee or to answer correspondence.

* * *

---

42 Pa.C.S.A. § 2503. Right of participants to receive counsel fees

The following participants shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter:

* * *

[Paragraphs (1)-(8) are not related to the instant claim. See the above Rule.]

(9) Any participant who is awarded counsel fees because the conduct of another party in commencing

the matter or otherwise was arbitrary, vexatious or in bad faith.

* * *

FEDERAL PRACTICE AND PROCEDURE

Fed. R. Civ. P. Rule 16

* * *

1526. – The Pretrial Order

* * *

The pretrial order is intended to further the purposes of the conference.[6] As stated by Judge Charles E. Clark: "A pre-trial order is an absolute necessity. . . ."[7]

* * *

As stated in Rule 16(e), the pretrial order "controls the subsequent course of the action."

* * *

a party charged with failing to comply carries the burden of showing that in fact he met his obligations under the order.[15] Should the party be unable to do so, various sanctions may be imposed.[16]

* * *

---

[6] [Footnote omitted in printing]

[7] **Judge Clark**

Clark, Objectives of Pre-Trial Procedure, 1956, 17 Ohio St. L.J. 163, 169.

[15] **Burden of proof**

Ginns v. Towle, C.A.2d, 1966, 361 F.2d 798.

[16] **Sanctions**

See § 1531.

Fed. R. Civ. P. § 1531 Rule 16

* * *

The fact that a pretrial order was violated is sufficient to allow some sanction.

* * *

MOORE'S FEDERAL PRACTICE 3D

§ 811.04[6]

* * *

[b] Withdrawal

The Model Rules envision that a lawyer must withdraw if "the representation will result in violation of the rules of professional conduct or other law"[57] Withdrawal, particularly in the course of litigation, is no panacea. Courts are often understandably resistant to allowing lawyers to withdraw in the midst of litigation.

* * *

---

[57] [Footnote omitted in printing]

ABA MODEL RULES OF PROFESSIONAL CONDUCT

RULE 1.16: DECLINING OR TERMINATING REPRESENTATION

* * *

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client allowing time for employment of other counsel.

* * *

Mandatory Withdrawal

[2] A lawyer ordinarily

* * *

The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct;

* * *

There are 4 copies of this agreement.

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Non-Jury Trial _____

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Civil Action No. 02-8845

Caption of Case Kenneth Snyder, Jacqueline Snyder
v. Tawoos Bazargani, Paul Bagherpour

Name of Trial Counsel Joel W. Todd, Esquire

Law Firm Dolchin, Slotkin & Todd, P.C.

Address One Commerce Square - 24th Floor
2005 Market Street
Philadelphia, PA 19103

Telephone No. 215-665-3505 Fax No. 215-665-2565

Representing Tawood Bazargani

1. By what date can discovery be completed?
N/A

2. The case will be ready for trial on or about
N/A
(The Court will use this date as the approximate listing date for trial.)

3. Will an early settlement conference (prior to completion of discovery) be helpful in effecting a settlement of this case?
Yes _____ No X

If your answer is "Yes", state the appropriate time for such a conference

_____

The Court will not list this case for a pretrial conference unless all parties request it. **Parties should make the request in writing** (by letter), stating the topic to be discussed.

4. Trial time:

   (a) Estimate of total time to present your case

   N/A

   (b) Estimate of total time for the entire trial

   N/A

5. In addition to the above, do you have any special comments to make? (If necessary, use reverse side.)

   Pursuant to a settlement agreement reached at a hearing before the Honorable Bruce Kauffman, it was agreed that the plaintiffs and and Dr. Tawoos Bazargani would execute mutual releases and all claims against Dr. Bazargani would be dismissed.

Name of counsel preparing form Joel W. Todd, Esquire

Date 3/15/05

Cardiovascular Healthcare Consultants, P.C. [LOGO]

Steven M. LaPorte, M.D., F.A.C.C.
John J. O'Hara, Jr., M.D.
Leo A. Podolsky, M.D., F.A.C.C.
Richard P. Tucci, M.D.
Herman D. Movsowitz, M.D.

Paoli Memorial Medical Building III
Suite 234
Paoli, Pennsylvania 19301
Telephone (610) 647-4260
Fax (610) 647-7430

February 25, 2005

Tawoos Bazargani, M.D.
40 Old Lancaster Rd.
Merion, PA 19066

RE: Medical Certificate

Dear Sir:

Dr. Bazargani was recently hospitalized at Paoli Memorial Medical Hospital, discharged on February 24, 2005, after a five day stay. She was in with Atrial Fibrillation and ischemic heart disease. We need to anticoagulate her for six weeks then readmit her to the hospital for a cardio version of her rhythm back to a normal rhythm. During this period of time if she's under increased stress it may exasperate her rhythm disturbance and or ischemia. It would therefore be helpful, if she would be able to postpone her legal cases for sixty days to allow me to stabilize her cardiac situation. I hope this information is helpful.

Very truly yours,

/s/ John J. O'Hara, Jr., M.D.
John J. O 'Hara, Jr., M.D.

App. 45

Associates in Cardiovascular Education, PC
po box 566
Plymouth Meeting, PA 19462-566
215-893-6680

[Tawo]os Bazargani, M.D.
[#4]06
[Ol]d Lancaster Road
[Merio]n, PA 19066

Dear Dr. Bazargani

[Dr. Ho]ward Rosner, D.O., F.A.C.C., F.A.C.O.I, am a board certified internal medicine cardiovascular disease specialist.

[I have] reviewed the the records provided to me that include.

1) Emergency room records 9/20/92 Lankenau Hospital, Wynnewood, PA
2) Office records Robert Atkins, MD. – 12/9/93 1/7/93 (aka 1994), 2/25/94, 11/8/94 12/6/94, 12/12/94, 3/7/95, and other non specified due to copy cutoff visits dating up to 12/10/98
3) Office report Cheryl Kennedy, MD – 11/28/94
4) Undated routine exercise test I believe occurred at Heart Care Associates in 1992 possibly up until 2/25/94
5) Coronary Angiogram – 12/19/95 – Lankenau Hospital – Wynnewood, PA

6) Office Reports Timothy Shapiro, MD – 1/2/96, 2/21/96, 3/28/96, 8/6/96, 7/15/97, 12/3/98

7) Stress Echocardiogram report 7/28/97 – Heart Care Associates – Wynnewood, PA.

[Tawo]os Bazargani, MD is a 56 year female physician who practiced psychiatry. She was [seen] in the emergency room at Lankenau Hospital in 1992 with a chest pain syndrome that [requi]red monitoring prior to discharge to home with recommendations to follow-up with a [Dr.] Silver, but "preferred a cardiology specialist". Her next record of interaction with a [physi]cian is Dr. Robert Atkins on 12/9/93 when a complete history and physical was [comp]leted. A type written report to Dr. Bazargani is available from 2/25/94. In the report [a s]ummary of the risk factors of family history and high cholesterol, along with a [illegible] ion of a "treadmill test . . . which was apparently unremarkable." There is also mention [in the] report of a cholesterol profile which "puts you in a somewhat higher range for [cardi]ac disease." Other office correspondence suggest that treatment of ulcer disease with [illegible]lori treatment ensued.

A report from Dr. Cheryl Kennedy, a psychiatrist, dated 11/28/94 states that Dr. Bazargani is "free of any delusions or impaired judgments or any other acute psychiatric problems that would interfere with her ability to care for patients." She is described as "euthymic and her affect was mildly anxious at times . . ."

The next available medical report is the angiography report that included insertion of an intra aortic balloon pump for stabilization of the patient prior to cardiac bypass surgery of "critical three vessel coronary artery disease." There is associated "mild to moderately decreased I.V systolic function". The I.V. angiogram indicates "hypokinesia" of the anterolateral and apical walls. Of interest is the reference in the selective angiogram of significant "collaterals" suggesting that the coronary disease documented had been present for some time prior to her acute event requiring her to seek attention. Subsequent records note her post-operative course.

It is my professional opinion based upon reasonable medical certainty that Dr. Bazargani had significant underlying coronary artery stenosis, as documented by her angiogram.

I have been asked to comment on "stress" as a risk factor for "triggering" a cardiovascular event. It is my professional opinion, that mental stress can and does put a patient with underlying coronary stenosis, like Dr. Bazargani, at significantly higher risk of befalling a cardiovascular event based on several observational, retrospective and prospective studies (best summarized in an entire **Cardiology Clinics – Triggers and Timing of Cardiac Events May 1996** edited by Prakash Deedwania, MD and Geoffrey Tofler, MD).

I cannot comment on her psychological makeup and "stresses" However, should a patient with the underlying coronary disease noted on Dr. Bazargani's angiogram present under mental stress, I believe with reasonable medical certainty that the patient would be at significantly higher risk of sustaining a untoward event.

Respectfully submitted,

/s/ Howard M. Rosner DO FACC F.A.C.O.I.
Howard M. Rosner D.O., F.A.C.C. F.A.C.O.I.
Associate Professor of Medicine

OFFICE OF THE CLERK – LEGAL DIVISION
UNITED STATES COURT OF APPEALS
21400 U.S. COURTHOUSE
601 MARKET ST.
PHILADELPHIA, PA 19106-1790

MARCIA M. WALDRON
CLERK

TELEPHONE
(215) 597-2378

May 2, 2006

Dr. Tawoos Bazargani
40 Old Lancaster Road
Latchs Lance Condo, #406
Merion, PA 19066

RE: Snyder, et al. v. Bazargani, et al.
C.A. No. 06-2396
(E.D. Pa. Civ. No. 02-cv-08845)

Dear Mr. Bazargani:

This will advise you that the above-captioned appeal will be submitted to a panel of this Court for possible dismissal because the notice of appeal was not timely filed:

The notice of appeal in your civil case was not filed within the time prescribed by the *Federal Rules of Appellate Procedure*:

Order entered: **January 12, 2006**
Notice of Appeal filed: **April 10, 2006**
Period permitted: **30 days**
Rule **XX** 4(a)(1)(A) ___ 4(a)(1)(B) ___ 4(a)(3)
___ 13(a)(b)

In the case of an untimely notice of appeal in civil cases, the District Court has discretion to permit an extension of time to file the notice of appeal: (1) where a motion requesting such relief is filed not later than 30 days after the normal appeal period; and (2) where good cause or excusable neglect is shown. *See Federal Rules of Appellate Procedure* 4(a)(1) and 4(a)(5), attached.

The District Court may reopen the time for appeal when a party entitled to notice of entry of a judgment or order did not receive such notice from the court or any party within 31 days of its entry: (1) upon motion filed within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier; and (2) upon finding that no party would be prejudiced. *See Federal Rule of Appellate Procedure* 4(a)(6), attached.

We note that you filed a motion for reconsideration in this case. If a motion for reconsideration of a District Court order is timely filed, the time for appeal does not begin to run until the District Court enters an order disposing of that motion. Rule 4(a)(4), *Federal Rules of Appellate Procedure*. To be timely, a motion for reconsideration must be filed within 10 days of the date of entry of the final order. Rule 59(e), *Federal Rules of Civil Procedure*. Rule 6(b), Federal Rules of Civil Procedure provides that the district court may not extent the time for filing motions under

Rules 50(b) and (c)(2), 52(b), 59(b), (d), and (e), and 60(b).

The parties may submit written argument in support of or in opposition to dismissal of the appeal for failure to timely file the notice of appeal. Any response regarding timeliness must be in proper form (original and three copies, and certificate of service), and must be received by this office no later than 21 days from the date of this letter. Upon expiration of the response period, the case will be submitted to the Court for consideration of the timeliness issue. The parties will be advised of any order issued in this matter.

Very truly yours,

/s/ Laura L. Greene
LAURA L. GREENE
Staff Attorney

LLG/nf

cc: (Joseph J. McAlee, Esq.
(Thomas E. Groshens, Esq.
Sprague & Sprague
135 South 19th Street
Wellington Building, Suite 400
Philadelphia, PA 19103

Ronald H. Beifeld, Esq.
14 East Germantown Pike
P.O. Box 7
Plymouth Meeting, PA 19462

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ENNETH and JACQUELINE SNYDER 390 Shelbourne Lane Phoenixville, PA. 19460 Plaintiffs	*	
v.	*	
TAWOOS BAZARGANI 40 Old Lancaster Road, No. 406 Merion, PA. 19066	*	No. 05-4051 (Consolidated with No. 05-3817)
and	*	
PAUL BAGHERPOUR 738 North Broad Street Woodbury, NJ 08106 Defend nts	*	

Ms. Laura Greene Esquire
Staff Attorney
Office Of The Clerk – Legal Division
United States Court of Appeals
Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, Pa. 19106-1790

Dear Ms. Greene:

Tawoos Bazargani, M.D. a defendant and a pro se in the above identified claim through this official letter responds to your letter of May 2, 2006 in reference to defendant's Interlocutory Appeal of April 10, 2006 of the above identified case. Therefore, defendant Tawoos Bazargani, M.D. (myself) would rather

to request kindly your attention to the following matters:

1. As it has been documented in your letter of May 2, 2006 defendant Tawoos Bazargani, M.D. filed a motion for Reconsideration of the order issued by District Court Eastern District of Pennsylvania on January 11, 2006 which was vacating District Court's previous order of October 17, 2005, where District Court granted the stay of proceeding for defendants pending the appeal.

2. Defendant Tawoos Bazargani, M.D., until March 13, 2006, neither received any order from District Court ruling defendant's Reconsideration where defendant strongly argued against the order of January 11, 2006 nor she received any other kind of response, what so ever, then in March 2006 an order was issued where District Court denied defendant's Reconsideration which was entered in to record by March 13, 2006.

3. An appeal from a final order denying the motion is thirty (30) days regardless of the cause for denial because the reasons for denial would not have any impact on appeal.

4. Following denial of Reconsideration within thirty (30) days time limit defendant Tawoos Bazargani, M.D. filed a Notice of Appeal from the Order denying Reconsideration.

5. On or about April 18, 2006 the Third Circuit after reviewing defendant's Notice of Appeal transferred the Notice of Appeal to the District Court in case if the Notice of Appeal has not been filed in both courts.

6. However, the letter of May 2, 2006, neglected to mention about District Court's order denying defendant Tawoos Bazargani's Reconsideration which is a fundamental factor in this appeal.

Consequent to the above documented causes defendant Tawoos Bazargani's Notice of Appeal has been filed timely within thirty (30) days following the denial of defendant's Reconsideration. Please let me know in writing within ten days from the below date if there is any other legal explanation for the sequential legal events as documented above from paragraphs No. one through six (1-6).

Please consider that, according to my legal record, no longer Mr. Joseph J. McAlee Esquire is representing plaintiffs and no longer Mr. Ronald H. Beifeld Esquire is representing Mr. Paul Bagherpour therefore a copy of this letter will be mailed to Mr. Thomas E. Groshens Esquire and Mr. Paul Bagherpour.

May I thank you for your consideration in this matter.

Date May 11, 2006

Certified Mail No:
7005-1160-0001-5568-0050

Very truly yours,
/s/ T. Bazargani
Tawoos Bazargani, M.D.

BEST AVAILABLE COPY

CC: Regular Mail

Ms. Tina Koperna
The Case Manager of Third Circuit

Mr. Paul Bagherpour
209 Fawn Meadows Drive
Mount Royal, N.J. 08061-1041

Mr. Thomas E. Groshens
Sprague & Sprague
Suite 400
The Willington Bldg.
135 South 19th Street
Philadelphia, PA 19103

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

   Ms. Laura Greene Esq.
   U.S. Courthouse, 3rd Cir.
   21400 U.S. Courthouse
   601 Market St.
   Phila. Pa. 19106-1790

2. Article Number 0001 5569 0050

COMPLETE THIS SECTION ON DELIVERY	
A. Signature X /s/ M. Wisniewski	☐ Agent ☐ Addressee
B. Received by (*Printed Name*) X /s/ M. Wisniewski	C. Date of Delivery May 15, 2006
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3. Service Type ☐ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
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IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ENNETH and	*	
JACQUELINE SNYDER	*	
390 Shelbourne Lane	*	
Phoenixville, PA. 19460	*	
Plaintiffs	*	
	*	
v.	*	No. 05-4051
TAWOOS BAZARGANI	*	(Consolidated
40 Old Lancaster Road, No. 406	*	with No. 05-3817)
Merion, PA. 19066	*	
and	*	
PAUL BAGHERPOUR	*	
738 North Broad Street	*	
Woodbury, NJ 08106	*	
Defendants.	*	

NOTICE

Defendant Tawoos Bazargani, M.D. pursuant to Federal Civil Rule of Local Appellate Procedure, Rule 5 hereby files this "Notice for Appeal by Permission From The Order Denying Defendant's Motion for consideration of The Order Posting A Supersedes Bond for Ten Thousand Dollars" in the above identified case.

Date April 10,2006 /s/ T. Bazargani
Tawoos Bazargani, M.D.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

KENNETH and JACQUELINE SNYDER	:	
Plaintiffs,	:	
v.	:	No. 02-8845
TAWOOS BAZARGANI and PAUL BAGHERPOUR	:	
Defendants.	:	

MOTION FOR LEAVE TO WITHDRAW AS COUNSEL FOR DEFENDANT TAWOOS BAZARGANI

Joel W. Todd, Esquire, and Dolchin, Slotkin & Todd, P.C., counsel for Defendant Tawoos Bazargani, hereby file this Motion for Leave to Withdraw as Counsel for Defendant Tawoos Bazargani, and respectfully request that this Honorable Court enter the attached Order. In support of the within Motion, Joel W. Todd, Esquire and Dolchin, Slotkin & Todd, P.C. have attached their Memorandum of Law and would incorporate same herein as though set forth in full.

WHEREFORE, Joel W. Todd, Esquire and Dolchin, Slotkin & Todd, P.C., hereby request that this Honorable Court grant their Motion for Leave to Withdraw as Counsel for Defendant Tawoos Bazargani.

DOLCHIN, SLOTKIN
& TODD, P.C.

Date: April 15, 2005 BY: JWT2035
JOEL W. TODD, ESQUIRE
Attorney for Defendant
Tawoos Bazargani

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA**

KENNETH and JACQUELINE SNYDER Plaintiffs,	:	
v.	:	No. 02-8845
TAWOOS BAZARGANI and PAUL BAGHERPOUR Defendants.	:	

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR LEAVE TO WITHDRAW
AS COUNSEL FOR DEFENDANT
TAWOOS BAZARGANI**

* * *

II. ARGUMENT

The Pennsylvania Rules of Professional Conduct govern attorney conduct in the Eastern District. Rule 83.6 of Eastern District of Pennsylvania District Court Local Rules; See also *Wolgin v. Smith,* 1996 U.S. Dist. LEXIS 12437 at pg. 5 (E.D. Pa. 1996). Rule

1.16 of the Pennsylvania Rules of Professional Conduct provides for termination of representation where, *inter alia*, "good cause for withdrawal exists." Rule 1.16(b)(6); *Wolgin,* 1996 U.S. Dist. LEXIS 12437 at pg. 6. Rule 1.16 provides in pertinent part as follows:

> (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if
>
> . . .
>
> . . .
>
> (3) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent. . . .
>
> . . .
>
> (6) other good cause for withdrawal exists.

Of course, an attorney's ability to terminate representation is ultimately at the discretion of the trial court. *Wolgin,* at pg. 5. The following factors are to be considered: "(1) the reason why withdrawal is sought; (2) the prejudice withdrawal may cause to litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay resolution of the case." *Id.*

Bazargani insisted upon appealing a ruling which exonerated her. Bazargani has repudiated **several agreements** to resolve the matter by executing mutual releases, having given Todd and the Snyders a continuous "run-a-round." Bazargani complains of serious illness, and has repeatedly

demanded postponement of this matter. Irrespective of the cause, Bazargani's actions are imprudent. Todd, after securing a victory for Bazargani, cannot, in good conscience, pursue a course of action which is unnecessary and will expose his client to substantial risk. Todd further has good cause to withdraw as he cannot, in good conscience, use heavy handed tactics to force Bazargani to cooperate with this litigation. Indeed, not only could such pressure pose a health risk to Bazargani, but it would be futile, as Bazargani steadfastly refuses to follow advice.

The court must also consider whether any prejudice would result to Bazargani; the extent of any harm to the administration of justice; and the "degree to which withdrawal will delay resolution of the case." Bazargani will not suffer prejudice if Todd and DS&T are permitted to withdraw. Bazargani has repeatedly requested postponement of this matter based on her illness. If her request is granted, she will have sufficient time within which to obtain new counsel and mount a defense. More importantly, though, any possible prejudice would be the direct result of Bazargani's self-destructive behavior despite Todd's patient and reasoned advice. Bazargani cannot "cry" prejudice that was self-inflicted.

Finally, the withdrawal will neither harm the administration of justice nor delay resolution of this matter. Justice, as to Bazargani, has already been administered. If Bazargani insists on participating in a trial despite her release at arbitration from the case, and her request for postponement due to illness

is granted, she has sufficient time within which to retain new counsel, and no substantial delay will result. Based on the above, Todd and DS&T should be permitted leave to withdraw as Bazargani's counsel.

III. CONCLUSION

Based on the foregoing, Todd and DS&T respectfully request that this Honorable Court grant them leave to withdraw as counsel for Bazargani.

DOLCHIN, SLOTKIN
& TODD, P.C.

Date: April 15, 2005

JWT2035
JOEL W. TODD, ESQUIRE
ID #17719
One Commerce Square –
24th Floor
2005 Market Street
Philadelphia, PA 19107
(215) 665-3502
Attorney for Defendant,
Tawoos Bazargani

CERTIFICATE OF SERVICE

I, Joel W. Todd, Esquire, do hereby certify that I have caused Joel W. Todd, Esquire and Dolchin, Slotkin & Todd, P.C.'s Motion for Leave to Withdraw as Counsel for Defendant Tawoos Bazargani to be sent on the date below to the following:

Tawoos Bazargani
40 Old Lancaster Road
Merion, PA 19066
Via First Class Mail

Ronald H. Beifeld, Esquire
14 East Germantown Pike
Plymouth Meeting, PA 19462
Via First Class Mail

Thomas A. Sprague, Esquire
Sprague & Sprague
The Wellington Building, Suite 400
135 South 19th Street
Philadelphia, PA 19103-4909
Via First Class Mail

JWT2035
JOEL W. TODD, ESQUIRE

Date: April 15, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH and JACQUELINE SNYDER, *Plaintiffs,*	:	**Civil Action No. 02-8845**
v.	:	**Jury Trial Demanded**
TAWOOS BAZARGANI and PAUL BAGHERPOUR, *Defendants.*	:	**Hon. John P. Fullam**

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ISSUE OF DEFENDANTS' LIABILITY FOR ENGAGING IN DISCRIMINATORY CONDUCT PROHIBITED BY THE PENNSYLVANIA HUMAN RELATIONS ACT

SPRAGUE & SPRAGUE

Thomas A. Sprague (I.D. 34716)
Thomas E. Groshens (I.D. 51118)
Wellington Bldg., Suite 400
135 South 19th Street
Philadelphia, PA 19103
(215) 561-7681

Attorneys for Plaintiffs, Kenneth & Jacqueline Snyder

Dated: March 30, 2005

* * *

Judge Kauffman placed the substance of the new settlement agreement on the record:

> And I thank you, Dr. Bazargani, I appreciate your action with Mr. Todd this afternoon, and we have now on the record that – assuming the documents say what they are going to say – you have Mr. Biefield, Mr. Todd and Mr. McAlee, which is very unusual by the way, to have three lawyers who are on separate sides all agree on something, but they have agreed on what those releases are intended to accomplish. So you're protected.

[Transcript at 18:06 to 18:13 (Exh. "N")].

* * *

Tawoos Bazargani, M.D.
40 Old Lancaster Rd
Merion, Pa. 19066

Mr. Thomas A. Sprague
Sprague & Sprague
Suite 400
The Willington Building
135 South 19th Street
Philadelphia, Pa. 19103-4909 April 15, 2005

RE: Kenneth & Jacqueline Snyder v. Tawoos Bazargani and Paul Bagherpour, No.02-8845

Dear Mr. Sprague:

Please find enclosed the General Release of defendant Tawoos Bazargani, M.D. and plaintiffs Ms. Jacqueline Snyder and Mr. Kenneth Snyder. We can sign General Releases simultaneously in your office. However because of difficulty of arranging a time to mach everybody's availability, and for the convenience, plaintiffs can sign, without any changes whatsoever in General Release, and leave it in your office then I can come to your office for signing and picking up the plaintiffs' signed General Release.

May I thank you in advance for your consideration in this mater.

CC: Mr. Ronald H. Beifeld, Esquire

Very truly yours

/s/ T. Bazargani
Tawoos Bazargani, M.D.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

KENNETH SNYDER, et al.	
Plaintiff	CIVIL ACTION NO. 02-CV-8845
vs.	Philadelphia, Pennsylvania
TAWOOS BAZARGANI, et al.	June 14, 2005
Defendants.	JURY TRIAL – DAY I

BEFORE THE HONORABLE JOHN P. FULLAM
UNITED STATES DISTRICT COURT JUDGE
And a Jury

APPEARANCES:

For the Plaintiff: THOMAS A. SPRAGUE, ESQUIRE
SPRAGUE & SPRAGUE
135 South 19th Street
Philadelphia, Pennsylvania 19103

For the Defendant: RONALD H. BEIFELD, ESQUIRE
14 East Gernmantown Pike
Plymouth Meeting, Pennsylvania
19462

Deputy Clerk/ Rosalind Burton-Hoop

ESR Operator: Michael Baker

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Haddon Heights, New Jersey 08035

Proceedings recorded by electronic sound recording, transcript produced by computer-aided transcription service.

* * *

[1.2] THE COURT: Why are we having a trial?

MR. SPRAGUE: That's a good question, your Honor.

[1.3] We have tried many, many times for many years to try and resolve this matter and I think we've been more – more – than reasonable in what we have proposed and it doesn't seem to –

THE COURT: Well, as I understand it –

MR. SPRAGUE: – have gotten us anywhere.

THE COURT: – it was – the case was settled and all that remained to be done was an exchange of releases and that Dr. Bazargani was reluctant to sign the release without the addition of some language.

But that according to the correspondence I just got this morning – as of June 10th – a few days ago, Dr. Bazargani did sign the release, is that right?

MR. SPRAGUE: Your Honor, she did sign a release which we received yesterday morning. She

had at various times refused to settle this case for various reasons.

THE COURT: Right.

MR. SPRAGUE: And had been told that – I think it was now a couple of months ago – that if she failed to settle the case as of a certain date, there would be no settlement. She failed to do that.

And in the meantime, Dr. Bazargani has filed several motions – as your Honor knows with this Court – to which we've had to respond and now, we're ready to proceed.

THE COURT: Well, what is at stake here?

[1.4] MR. SPRAGUE: Your Honor, in terms of the statutes, I can tell you that –

THE COURT: Oh, I'm not worried about that. I'm talking about – let's be realistic, if you'd agreed to settle, what on earth difference does it make whether it was settled three weeks ago or today?

MR. SPRAGUE: Well, let – let me tell your Honor where we are in terms of settlement.

We would be perfectly happy as we were years ago, to accept the settlement award – or the arbitration award – that was entered in this case and leave it up to your Honor to award attorney's fees and costs.

And, frankly, as far as I'm concerned, your Honor, I would be willing to make that binding and non-appealable and subject to solely your Honor's discretion.

THE COURT: And the award of the arbitrator was –

MR. SPRAGUE: Was only $10,000.00, your Honor.

THE COURT: And it was against Mr. Bagherpour and not Dr. Bazargani?

MR. SPRAGUE: Correct.

* * *

[1.71] K. M. Snyder – Cross

BY MS. BAZARGANI:

Q. So, it was the conclusion of you and your wife, that because you are Jewish, you are not going to get this apartment, because the owner is not in favor of you as a Jew – Jews?

MR. SPRAGUE: Objection.

THE COURT: Go ahead.

A. That was my conclusion, yeah.

Q. You just said that you got very disappointed that you [1.72] couldn't move in to apartment, because you were denied the apartment, if –

THE COURT: That's what he said.

Q. – if – if you believed that the owner is a Jew – sorry.

If you believed the owner is a Muslim and is not very favorite with the Jews and is denying the apartment for you because of your religion, why – for the sake of God – you wanted to be a tenant for such a landlady?

A. Well, if I hadn't been discriminated against, I – I don't have a problem living in an apartment owned by a Muslim. I don't understand the question.

* * *

[1.83] L. Ceisler – Cross

CROSS-EXAMINATION

BY MS. BAZARGANI:

Q. Mr. Ceisler, you – what universities are you attended for the law school?

A. Excuse me, ma'am?

Q. What university did you finish your education about the [1.84] law?

THE COURT: Duquesne University in Pittsburgh, he said.

A. I went – I went to Penn for one year, but I didn't graduate from Penn.

* * *

THE COURT: Did you get a law degree from anywhere?

THE WITNESS: I got a law degree from Duquesne, your Honor, 'cause that's where I spent the majority of my time. I wish I could have graduated from Penn.

* * *

[1.85] BY MS. BAZARGANI:

* * *

Q. Do you have a Bar number?

A. I did – I guess, I still do, ma'am.

* * *

[1.86] Q. Have you at any time practiced as an attorney?

A. Yes, ma'am.

Q. How many years?

A. I practiced, you know, probably around four years.

Q. And that was immediately after your graduation?

A. No, ma'am.

Q. When was it?

MR. SPRAGUE: Objection, your Honor, to the relevance.

THE COURT: Objection overruled. It's fascinating.

(Laughter.)

A. I – I worked for – I worked for a couple of years after – after law school and then – then, I – and then, I returned – then I went to – then I became a lawyer.

THE COURT: You don't think practicing law is work?

THE WITNESS: Sir, it was too hard a work for me.

BY MS. BAZARGANI:

Q. So, for almost ten years, you were not working as an attorney when you talked to Mr. Bagherpour?

A. (No verbal response.)

THE COURT: Quite a while, yes, okay.

Q. And you introduced yourself to Mr. Bagherpour that you are attorney and talking on the behalf of Mr. Snyder?

A. I don't remember, ma'am.

* * *

[1.148] F. Bagherpour – Direct

[BY MR. BELFELD]

* * *

He asked to fill out the application, anyway, but he wanted those things to be done. I agreed, I gave him

application. He's in the middle of the application, the section says, how many people? And he said, me, he put his name down, his wife, his daughter and turn – turn to me and say, oh, by the way, we have a dog.

And I stopped him right there. I said, I'm sorry, that would be problem. He said, why that would be problem? I said, * * * owner doesn't want any dogs in the premises.

* * *

[1.149] Q. Didn't – didn't you state at one time, that the reason she [1.150] was against having the pet in the condominium was because of her religion? Why did you offer that as a reason?

A. I – that was my belief at that time.

* * *

– I didn't think that is something, you know, I shouldn't tell him about Dr. Bazargani's religion.

Q. So, you were not sure that was the reason, you just surmised –

A. I wasn't sure.

* * *

[1.171] Side Bar

MS. BAZARGANI: Your Honor, this is my biggest – the most important witness, Mr. –

THE COURT: Good heavens, didn't know you had one.

MS. BAZARGANI: – Thomas Schickling.

THE COURT: Who is he?

MS. BAZARGANI: Thomas Schickling has handled my property for ten years.

THE COURT: Okay.

MS. BAZARGANI: And I had – I had sent him –

THE COURT: A subpoena?

MS. BAZARGANI: – one certified mail and –

* * *

MS. BAZARGANI: A subpoena with the certified mail. This is the subpoena, okay?

THE COURT: Okay.

MS. BAZARGANI: And he was – he just ignored that one.

I mailed him once more, the subpoena with the overnight mail.

THE COURT: All right.

* * *

[1.172] MS. BAZARGANI: And he is the only one that is realtor and is really my agent, my real agent for ten years.

* * *

THE COURT: Well, if he's your agent, why can't he – can't you call him up and get him here?

MS. BAZARGANI: He was my agent and he's ignoring it.

THE COURT: Well –

MS. BAZARGANI: Number one question is Mr. Schickling is a Jewish man? Is – is going to – I mean – for a whole lot

* * *

[1.173] MS. BAZARGANI: That if I hired a Jewish man to handle my property, isn't that important to this case?

* * *

THE COURT: No. You can call him on the phone, though?

MS. BAZARGANI: I don't have his home number.

* * *

MS. BAZARGANI: No, his home number, your Honor, I [1.174] don't have his home number?

* * *

AFFIDAVIT OF LARRY CEISLER

COMMONWEALTH OF PENNSYLVANIA :
: S.S.
COUNTY OF PHILADELPHIA :

I, Larry Ceisler, being duly sworn according to law, depose and state that:

1. I am a resident and citizen of the Commonwealth of Pennsylvania;

2. At approximately 9:00 a.m. on December 9, 2000, Ken Snyder contacted me and summarized a series of conversations he had with an individual he identified as "Paul." Ken stated he had reached an agreement to rent a condominium through an individual named "Paul." Ken stated "Paul" later called him back and inquired whether Ken was Jewish and Ken responded in the affirmative. According to Ken, "Paul" called him back a second time and stated the owner did not want to rent the condominium to the Snyders. When asked whether this change of mind had anything to do with "Paul" calling to inquire about the Snyders' religious affiliation, "Paul" denied the decision had anything to do with the Snyders' religion.

3. I offered to call "Paul" to inform him that discrimination based on religion was illegal and to suggest that the owner of the property reconsider her decision. I called "Paul" and left a message.

4. At approximately 4:00 p.m. on December 9, "Paul" returned my call. I asked "Paul" why he, "Paul" had called to inquire about the Snyders' religious affiliation.

5. "Paul" responded that he was just curious and wanted to be able to inform the Snyders where the synagogue closest to the property was located. When I asked Paul where the synagogue closest to the property was located, "Paul" could not offer a specific answer stating it was "downtown."

6. I informed Mr. Snyder of my conversation with "Paul."

/s/ Larry Ceisler
LARRY CEISLER

Sworn to and subscribed
before me this 7th day
of August, 2001.

/s/ Darryl. F. Otto
NOTARIAL SEAL

Notary Public
DARRYL F. OTTO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires Nov. 22, 2004

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

KENNETH and JACQUELINE SNYDER	:	
Plaintiffs	:	
v.	:	No. 02-8845
TAWOOS BAZARGANI and PAUL BAGHERPOUR	:	
Defendants	:	

DEFENDANT TAWOOS BAZARGANI, M.D.'S
MOTION FOR RECONSIDERATION
OF THE ORDER FOR POSTING A
SUPERSEDEAS BOND FOR
TEN THOUSAND DOLLARS

Defendant Tawoos Bazargani, M. D. hereby moves pursuant to Federal Rule of Civil Procedure, motion for reconsideration of the Order of January 11, 2006 for posting a supersedeas bond of ten thousand dollars (10/000.00) to the Clerk and to the above identified Court within twenty (20) days from the date of Order. In support of the within the motion defendant Tawoos Bazargani, M.D. has attached her Memorandum of Law and would incorporated same herein as though set forth in full.

WHEREFORE, Defendant Tawoos Bazargani, M.D. prays this Honorable Court to Order and grant Defendant Tawoos Bazargani, M.D.'s motion for

reconsideration of the Order of January 11, 2006 for posting a supersedeas bond for ten thousand dollars

Respectfully Submitted

February 1, 2006 /s/ T. Bazargani
Tawoos Bazargani, M.D.

GENERAL RELEASE

For the Sole Consideration of One ($1.00) Dollar, and Mutual Releases the receipt and sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges **KENNETH SNYDER and JACQUELINE SNYDER**, their heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable, or who might be claimed to be liable from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all damages, known and unknown, which have resulted or may in the future develop from: Any claims or potential claims for legal fees and costs that were asserted or could have been asserted by the undersigned defendant in *Kenneth and Jacqueline Snyder v. Tawoos Bazargani* and *Paul Bagherpour*, U.S.D.C., E.D. Pa. Docket No. 02-8845.

Undersigned hereby declares that the terms of this General Release have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise adjustment and settlement of any and all claims, disputed or otherwise on account of the damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid Federal Case.

IN WITNESS WHEREOF and intending to be legally bound, the undersigned, through and by its

respective representatives, have executed this General Release this ___ day of _____, 2004.

BY: _____
TAWOOS BAZARGANI, M.D.

GENERAL RELEASE

For the Sole Consideration of One ($1.00) Dollar and Mutual Releases, the receipt and sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges **TAWOOS BAZARGANI, M.D. ("Dr. Bazargani")**, her shareholders, officers, employees, agents and assigns, and all other persons, firms or corporations liable, or who might be claimed to be liable from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all damages, known and unknown, which have resulted or may in the future develop from: Any claims or potential claims that were asserted or could have been asserted by the undersigned plaintiffs in *Kenneth and Jacqueline Snyder v. Tawoos Bazargani and Paul Bagherpour*, U.S.D.C., E.D. Pa. Docket No. 02-8845 (hereinafter the "Federal Case").

Undersigned hereby agrees to dismiss the Complaint against Dr. Bazargani in the Federal Case with prejudice. Undersigned hereby reserved all claims against Paul Bagherpour in the Federal Case.

Undersigned hereby declares that the terms of this General Release have been completely read and

are fully understood and voluntarily accepted for the purpose of making a full and final compromise adjustment and settlement of any and all claims, disputed or otherwise on account of the damages above mentioned, and for the express purpose of precluding forever any further or additional claims against Dr. Bazargani arising out of the aforesaid Federal Case.

IN WITNESS WHEREOF and intending to be legally bound, the undersigned, through and by their respective representatives, have executed this General Release this ___ day of _____, 2004.

_____
KENNETH SNYDER

_____
JACQUELINE SNYDER

Tawoos Bazargani, M.D.
40 Old Lancaster Road
Merion, Pa. 19066

Certified Mail No.7004-2890-0003-9633-3915

Mr. Thomas A. Sprague Esquire
Sprague & Sprague
Suite 400
The Willington Buildimng
135 South 19th Street
Philadelphia, PA. 19103-4909

April 28,2005

RE: Kenneth and Jacqueline Snyder v. Tawoos Bazargani and Paul Bagherpour, U.S.D.C., E.D. Pa. Docket No. 02-8845

Dear Mr. Sprague:

I am in receipt of your correspondence dated April 25,2005 in reference to signing General Release by April 29,2005 and this official letter is in response to your above mentioned letter.

I request your attention to the following matters:

1. In plaintiffs' Partial Summary Judgment filed on March 30,2005 ("the Summary Judgment") (P-7, Parag.1) Plaintiffs have documented as follow "Bagherpour filed a timely appeal to obtain a trial *de novo* and Snyders and Bazargani reached a settlement under which the Snyders agreed not appeal the arbitration award (issued on September 20,2004) with respect to Bazargani.. ". My impression from this statement is that you meant agreement for General Release which was mailed to your office on

April 15,2005, for signature, otherwise, if there was any special meeting or conference, I was not informed about it, and with good certainty I know that there was none.

2. General Release was solely prepared by my former attorney Mr. Joel W. Todd Esquire ("Mr. Todd") from Dolchin, Slotkin & Todd with no participation on my part, what so ever, and was received by myself late in October 2004, (past October 20,2004) and there has been a prolonged negotiation over the context of General Release.

3. As it has been documented in the Summary Judgment, Since December 10,2004 Mr. Todd intended to motion to withdraw as my attorney, therefore, since then I have been proceeding the instant claim as *Pro se*.

4. On January 13,2005 a conference was scheduled for the instant claim, in reference to what, I have written my personal letters to the Honorable Bruce W. Kauffman and plaintiffs but received no response. However, a few days prior to the conference Mr. Todd' s secretary informed myself that the conference is supposed to be almost an status conference.

5. In the Summary Judgment (P-7, Paragr.3) the plaintiffs have documented as follow: "On January 13, 2005, . . . Proceeding *Pro se* Bazargani continued to press her demand for a trial *de novo* . . . she was concerned about an unspecified "threat" allegedly made against her.". I would rather to request your attention to the fact that the "threat" has not

unspecified rather it has been very serious and very specified and has been documented all over the file of record that had been prosecuted by Mr. Joseph McAlee Esquire prior to your entry of appearance several weeks ago. I would rather to make the following documentation in reference to the threat. After Snyders were denied about renting my apartment which has been subject to this claim because they had a dog Mr. Kenneth Snyder had made an angry telephone call to Mr. Bagherpour who had been processing the lease and has launched the following threat, that he is a jewish man who belongs to a world wide network which has endless power and that Dr. Bazargani (myself) either meet his demands or face the consequences. Such a serious threat has never been investigated nor litigated and has conceivably been of my utmost concern not only prior to the conference, but during the conference and following the conference.

6. In General Release there is a statement where plaintiffs agreed not to retaliate against Dr. Bazargani. One statement was added by myself, as a back up to this statement, that what action to take, if Dr. Bazargani is retaliated by the plaintiffs or any party on the behalf of plaintiffs. Adding such a statement, for me, was a matter of record, as with my full trust, I believed that there would be no need to touch these records in the future. The plaintiffs extreme negative reaction to this statement has made me to think twice about the whole matter and to be more thoughtful about the whole threat. However, the plaintiffs have not explained about their negative

reaction to this statement but in plaintiffs' response to the defendant Dr. Bazargani's motion (myself) for the continuation of the hearing they have complained about the phrasing. As it had been documented in my letter of April 25,2005, I am willing to negotiate about the plaintiffs concern about the General Release, otherwise they will be responsible for not signing the General Release which has deprived me from my legal rights for this *de novo* trial.

Please do not hesitate to contact me if there is any question.

Very truly yours

/s/ T. Bazargani, M.D.
Tawoos Bazargani, M.D.